No. 3084

United States

Circuit Court of Appeals

For the Ninth Circuit.

Apostles on Appeal.

(IN TWO VOLUMES.)

CLINTON J. HUTCHINS,

Appellant,

vs.

AMERICAN STEAMSHIP "GREAT NORTHERN," Her Engines, Boilers, Tackle, Apparel, Boats, Furniture and Appurtenances, and A. AHMAN, Master, Bailee and Claimant Thereof, and THE GREAT NORTHERN PACIFIC STEAMSHIP COMPANY, a Corporation, Owners Thereof,

Appellees.

VOLUME I.
(Pages 1 to 384, Inclusive.)

Upon Appeal from the United States District Court for the District and Territory of Hawaii.

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F. D. MONCKTON,
CLERK

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For the Libellant, Clinton J. Hutchins:

THOMPSON & CATHCART and GEO. A. DAVIS,

Campbell Block, Honolulu, Address of Thompson & Cathcart.

#203 Bank of Hawaii Building, Honolulu, Address of Geo. A. Davis.

For the Libelee: The American Steamship "Great Northern," Her Engines, etc., and A. Ahman, Master Thereof.

SMITH, WARREN & WHITNEY, #210 Bank of Hawaii Building, Honolulu. [1*]

In the District Court of the United States, in and for the District and Territory of Hawaii.

ADMIRALTY—No. 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The S. S. "GREAT NORTHERN," etc.,

Libellee.

Order Extending Time to June 16, 1917, to Transmit Record on Appeal.

Now, on this 16th day of May, A. D. 1917, it appearing from the representations of the clerk of this Court that it is impracticable for said clerk to pre-

*Page-number appearing at foot of page of original certified Apostles on Appeal.

pare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of errors in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this Court shall prepare and transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to June 16, 1917.

Dated May 16, 1917.

HORACE W. VAUGHAN,
Judge, United States District Court.

Filed May 16, 1917, at —— o'clock and —— minutes ——, M. A. E. Harris, Clerk. Wm. L. Rosa, Deputy Clerk. R. [2]

In the District Court of the United States, in and for the District and Territory of Hawaii.

No. 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The S. S. "GREAT NORTHERN," etc.,

Libellee.

Order Extending Time to July 31, 1917, to Transmit Record on Appeal.

Now, on this 16th day of June, A. D. 1917, it appearing from the representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of errors in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to July 31, 1917.

Dated Honolulu, T. H., June 16th, 1917.

HORACE W. VAUGHAN,
Judge, United States District Court.

Filed June 16, 1917, at —— o'clock and —— minutes ——, M. A. E. Harris, Clerk. Wm. L. Rosa, Deputy Clerk. [3]

[Endorsed]: No. 147. In the United States District Court, Territory of Hawaii. Clinton J. Hutchins, Libellant, vs. The S. S. "Great Northern," etc., Libellee. Order Extending Time to Transmit Record on Appeal. Filed June 17, '17, at —— o'clock and —— minutes ——, M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk.

In the District Court of the United States, in and for the District and Territory of Hawaii.

No. 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The S. S. "GREAT NORTHERN," etc.,

Libellee.

Order Extending Time to August 16, 1917, to Transmit Record on Appeal.

Now, on this 31st day of July, A. D. 1917, it appearing from the representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of errors in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to August 16th, 1917.

Dated Honolulu, T. H., July 16, 1917.

J. B. POINDEXTER,

Judge, United States District Court.

Filed July 16, 1917, at —— o'clock and —— minutes ——, M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk. [4]

In the District Court of the United States, in and for the District and Territory of Hawaii.

No. 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The S. S. "GREAT NORTHERN," etc.,

Libellee.

Order Extending Time to September 16, 1917, to Transmit Record on Appeal.

Now, on this 16th day of August, A. D. 1917, it appearing from the representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of errors in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to September 16, 1917.

Dated Honolulu, T. H., August 16th, 1917.

HORACE W. VAUGHAN,
Judge, United States District Court. [5]

[Endorsed]: 147. In the U. S. District Court, Territory of Hawaii. Clinton J. Hutchins vs. The S. S. "Great Northern." Order Extending Time to Transmit Record on Appeal. Filed Aug. 16, '17, at —— o'clock and —— minutes —— M. A. E. Harris, Clerk. Wm. L. Rosa, Deputy Clerk.

In the District Court of the United States, in and for the District and Territory of Hawaii.

No. 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The S. S. "GREAT NORTHERN," etc.,

Libellee.

Order Extending Time to October 16, 1917, to Transmit Record on Appeal.

Now, on this 14th day of September, A. D. 1917, it appearing from the representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of errors in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which

the clerk of this court shall prepare and transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to October 16, 1917.

HORACE W. VAUGHAN,
Judge, United States District Court.

Filed Sept. 14, '17, at —— o'clock and —— minutes —— M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk. [6]

In the District Court of the United States, in and for the District and Territory of Hawaii.

No. 147—(ADMIRALTY).

CLINTON J. HUTCHINS,

Libellant,

vs.

The S. S. "GREAT NORTHERN," etc.,

Libellee.

Order Extending Time to November 16, 1917, to Transmit Record on Appeal.

Now, on this 16th day of October, A. D. 1917, it appearing from the representations of the clerk of this court that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of errors

in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to November 16th, 1917.

HORACE W. VAUGHAN,
Judge, United States District Court.

Filed Oct. 16, 1917, at 2 —— o'clock and —— minutes —— M. A. E. Harris, Clerk. Wm. L. Rosa, Deputy Clerk. [6a]

In the District Court of the United States, in and for the District and Territory of Hawaii.

No. 147—ADMIRALTY.

CLINTON J. HUTCHINS,
Libellant,

vs.

The S. S. "GREAT NORTHERN," etc.,
Libellee.

Order Extending Time to November 30, 1917, to Transmit Record on Appeal.

Now, on this 8th day of November, A. D. 1917, it appearing from the representations of the clerk of this court that it is impracticable for said clerk to

transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of errors in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this court shall transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to November 30, 1917.

Dated November 8th, 1917.

HORACE W. VAUGHAN,
Judge, United States District Court.

Filed Nov. 8, 1917, at —— o'clock and —— minutes —— M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk. [6b]

In the District Court of the United States, in and for the District and Territory of Hawaii.

ADMIRALTY—No. 147.

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," Whereof A. AHMAN is Master and Captain, Her Tackle, etc.,

Libellee.

Clerk's Statement Under Admiralty Rule 4.

TIME OF COMMENCEMENT OF SUIT.

April 4, 1916: Verified libel was filed and monition was issued to the United States Marshal for the District of Hawaii.

NAMES OF ORIGINAL PARTIES.

Libellant: Clinton J. Hutchins.

Libellee: The American Steamship "Great Northern," whereof A. Ahman, whose full name is unknown, is and was lately master and captain, her tackle, apparel, furniture, boats and appurtenances and against all persons having or claiming to have any interest therein and against all persons lawfully intervening in their interests therein.

DATES OF FILING OF PLEADINGS.

April 4, 1916: Libel.

April 4, 1916: Claim.

November 23, 1916: Claimant's answer.

February 23, 1916: Amendment to libel.

February 26, 1917: Claimant's answer to amendment to libel. [7]

ATTACHMENT OF PROPERTY AND PROCEEDINGS THEREUNDER.

April 4, 1916: Monition was issued and delivered to the United States Marshal for the District of Hawaii. Said monition was thereafter returned in court with the following return by the said marshal. "Received the within monition on the 4th day of April, 1916, and return the same as executed upon

the American steamship 'Great Northern' by exhibiting original monition to Chief Officer Wall of said vessel (he being in charge), and by handing to and leaving with him a certified copy of monition and by posting public notices of attachment on the foremast and mainmast of said vessel, and by leaving Manuel Olsen in charge as Custodian, this 4th day of April, 1916. (Sgd.) J. J. Smiddy, U. S. Marshal. Received the within monition on the 4th day of April, 1916, and return the same as executed upon F. L. Waldron & Co., Ltd., agents for the American Steamship 'Great Northern' by exhibiting original monition to Fred L. Waldron, president of F. L. Waldron & Co., Ltd., and by handing to and leaving with him a certified copy of monition, this 4th day of April, 1916. (Sgd.) J. J. Smiddy, U. S. Marshal."

April 4, 1916: Claim filed by A. Ahman, master of said "Great Northern," her tackle, etc., with a bond for the release of the said American steamship "Great Northern," in the sum of thirty thousand dollars ($30,000), which amount is double the amount of the Libel, as per section 941 of the Revised Statutes of the United States, whereupon a release to the United States marshal for the District of Hawaii was issued by the Clerk of said Court.

TIME WHEN TRIAL WAS HAD.

The above-entitled cause came on regularly for trial in the United States District Court for the Territory of Hawaii, before [8] the Honorable Horace W. Vaughan, Judge of said District Court on the following days, to wit: February 16, 1917; Feb-

ruary, 17, 1917; February 19, 1917; February 20, 1917; February 21, 1917; February 26, 1917; February 27, 1917; March 1, 1917.

At the trial of said cause the following witnesses were examined *viva voce* and gave their evidence in open court before the said Judge of said court, to wit: Witnesses called on behalf of the libellant: Clinton J. Hutchins, Libellant, Dr. Clifford B. Wood, Dr. W. C. Hobdy, Dr. George F. Straub, Herbert E. Wescott, John S. Ford, John George Harrington, Robert B. Hackett.

Witnesses called on behalf of the libellee: William Paul Metzler, J. B. Morris, Capt. A. Ahman, Joseph Gould, Thomas S. Mills, Robert Booth, Frederick Lamb, Robert J. McAdory, John Waterhouse, J. W. Waldron.

April 3, 1917: Decision by Vaughan, Judge.

April 11, 1917: Decree, signed by Vaughan, Judge.

April 13, 1917: Notice of appeal.

April 18, 1917: Bond on appeal and for costs and staying execution.

April 16, 1917: Assignment of errors. [9]

Clerk's Certificate to Statement Under Admiralty Rule 4.

United States of America,
Territory of Hawaii,—ss.

I, A. E. Harris, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties

thereto and those who have become parties, before the appeal; the several dates when the respective pleadings were filed; an account of the proceedings showing attachment of the said vessel and her release under bonds; the time when the trial was had and the name of the Judge hearing the same; the date of entry of the final decree and the date when the notice of appeal was filed, in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 8th day of ~~October,~~ November A. D. 1917.

A. E. H.

[Seal] A. E. HARRIS,

Clerk, U. S. District Court, Territory of Hawaii.

[10]

In the District Court of the United States, in and for the Territory and District of Hawaii.

IN ADMIRALTY—LIBEL IN REM.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," Whereof A. AHMAN, Whose Full Name is Unknown, is and Was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances and Against All Persons Having or Claiming to Have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein,

Libellee.

Libel in Rem.

To the Honorable CHARLES F. CLEMONS, Judge of the District Court of the United States, in and for the District of Hawaii:

The libel of Clinton J. Hutchins, now of said Territory and District, late a passenger on board the steamship "Great Northern," whereof A. Ahman, now is and lately was master and captain, against the said steamship, her tackle, apparel, furniture, boats and appurtenances, and the freight due for her cargo, now or lately laden therein; and against all persons having or claiming any interest therein and against all persons lawfully intervening in their interests therein, in [11] a cause of damages, civil and maritime, alleges as follows:

1. This libellant shows that he is forty-six years of age and a married man; that he is now engaged in the brokerage business and has been so engaged for over five months last past, and for some years prior hereto has been engaged in the sale and placing of farm lands and properties, as well as in the brokerage business, as above set forth; that his said business requires his active, physical exertion, as well as mental activities necessarily required in such pursuits; that from his said business, libellant has earned and made large sums of money; that libellant's place of business is in San Francisco, State of California, and the properties which he is selling and disposing of are located in the State of California; that the income of libellant from the business pursuits above set forth when he can devote his active, physical and

mental exertions thereto averages a sum in excess of Fifteen Hundred Dollars a month.

2. That on or about the 14th day of February, 1916, libellant, together with his wife, took passage on the American steamship "Great Northern," then lying at the port of San Francisco, in the State of California, for a voyage to the port of Honolulu, in the Territory and District of Hawaii, and return therefrom to the said port of San Francisco; that the passage so engaged and taken by said libellant was a first-class passage, and libellant paid the full first-class rates charged for the same; that in consideration of the payment of such passage money, the said libellant was to be provided with a first-class passage, and with first-class accommodations; that it then and there became and was the duty due and owing from the said steamship "Great Northern," its owners and officers, to provide this libellant with a safe passage, as above set forth, and to provide on [12] said steamship "Great Northern" safe and proper appliances and equipment so that libellant could make said passage and voyage in safety and without harm or injury to himself; that in consideration of the money paid for such first-class passage, and by reason of the agreement under which the said libellant embarked as passenger on board said steamship "Great Northern," the said libellant was to be furnished with a safe and proper place for bathing, and it then and there became and was the duty of the libellee, its owners and officers, to furnish and provide for the use of the libellant a safe and proper bath-room, with

safe and proper equipment and appliances for the bath.

3. That in violation of the agreements and duties above set forth, and with a reckless disregard of the rights of this libellant, and negligently and carelessly the said bath-rooms on the said steamship "Great Northern" were so negligently constructed that they were dangerous and were unsuitable for the purposes of bathing; that more especially the rooms fitted up as and for shower-baths on the said steamship "Great Northern" were carelessly and negligently constructed so that the same were dangerous and unsuitable for the purposes of taking a shower-bath therein; that the base or bottom of said shower-baths was a porcelain bowl about two feet or so square, with sides from three to four inches high, with a slight depression in the center, and a slope thereto from all directions to the drain in the center of the bowl; that the sides of said shower-baths were constructed of marble slabs, with service pipes for both hot and cold water running up the side of one of said marble slabs; that in order to reach and enter the bath, it was necessary to step over the top of the rim of the bowl; that by reason of said construction, the bowl was slippery and difficult to stand upon and in; that there [13] was no provision made by means of rails or otherwise for grasping or holding on in case of slipping, nor was there any provision made by rubber mats, or otherwise, to prevent slipping and falling in the said baths; that at all times, and more especially when wet, the said bowls became slippery and dangerous, and the equipment

and lack of equipment, as aforesaid, were such as to cause a person entering therein to fall; that the construction and equipment and lack of equipment, as above set forth, made and rendered the said shower-baths unsafe and dangerous, and the construction and equipment, and lack of equipment, as above set forth, was negligent and careless as was to said libellee, its owners and officers, then and there well known. But that notwithstanding such negligent and faulty construction, equipment and lack of equipment, and notwithstanding the dangerous character thereof, the said baths were held out and made known to all passengers, and more especially to this libellant as proper and safe baths, both in construction and equipment.

4. That on the morning of the 18th day of February, 1916, while on board the libellee, the steamship "Great Northern," on the voyage from San Francisco to Honolulu, as aforesaid, and between the ports of San Pedro and Hilo, in the Territory and District of Hawaii, this libellant relying on the representation and agreement aforesaid that the said shower bath-rooms were safe and usable, entered one of the said shower-baths for the purpose of taking a shower-bath therein; that for such purpose, he had been duly called by the bath steward in charge of said shower-bath, and just as this libellant entered the shower-bath room, the said steward turned the water on therein; that without any fault or negligence on the part of this libellant, as he stepped [14] up over the rim of the porcelain bowl aforesaid, and as soon as his feet were on the porcelain bowl, by reason

of the slipperiness of the same, and by reason of the faulty construction, as above set forth, and because of the negligent and careless construction thereof, this libellant slipped and fell; that reason of the faulty, negligent and improper construction thereof, there was nothing in said bath-room by which this libellant could *safe* himself from falling by grasping or taking hold of any rail or other holding place; that this libellant was thrown heavily on his left side, and his left hand struck in the bowl of the bath opposite to the one he had entered, and the construction of which was of the same kind, and his hand slipping on the slippery porcelain bowl, and the weight of his body coming on his arm, the left shoulder joint of libellant was fractured and this libellant sustained severe injuries and bruises and a severe shock to his nervous system. And this libellant so fell and so received such injuries and bruises and shock, by and through the carelessness and negligence of the libellee, its owners and officers, and without fault or negligence on his part.

5. That by reason of the broken shoulder joint and injuries, bruises and shock as above set forth, this libellant suffered and still suffers great pain; that by reason of the broken shoulder joint as aforesaid, the left arm of libellant will always be shorter by about an inch than its normal length, and shorter than the right arm of this libellant, and will disfigure this libellant; that libellant has been unable since his fall and injury, as aforesaid, to use his left arm, and it will be a long time before he can use the said arm at all and the injury thereto was such as may result in

the loss of the use of the said arm. That owing, through and because of his said broken arm, and the injuries, [15] bruises and shock so by him sustained, as aforesaid, this libellant was unable to continue on his return voyage to San Francisco, as he had contemplated, and was unable to leave on the return sailing day of the steamship "Great Northern," to wit, February 26, 1916, and was obliged to and did remain in Honolulu ever since his arrival as set forth, and thereby suffered great loss in his business affairs, and by reason of his said broken arm and injuries, bruises and shock, sustained by him, as aforesaid, this libellant has been and is now unable properly to attend to his business, and has and is sustaining great loss by reason of his inability to attend to his said business. That this libellant by reason of his said broken shoulder joint, and of the injuries, bruises and shock sustained by him, as above set forth, has been put to and incurred great expense for medical attendance and treatment, amounting to at least the sum of $300. That by reason of his said broken shoulder joint and injuries, bruises and shock, so sustained by him, as above set forth, this libellant was put to great expense in necessarily remaining in Honolulu to an amount of at least $400.

That by reason of his said broken shoulder joint and bruises and injuries, shock, suffering and pain, and by reason of all the premises, libellant has suffered and sustained damages in the amount of $15,700.

6. That the said broken shoulder joint and bruises, shock, suffering and pain, and all and singu-

lar the premises, are true and were occasioned, caused and brought about by reason of the carelessness and negligence of the said libellee, the steamship "Great Northern," and her owners and master, and without fault, want of care or negligence on the part of said libellant. [16]

WHEREFORE, libellant prays that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against said American steamship "Great Northern," her tackle, apparel, furniture, boats and appurtenances, cargo and freight money, and against all persons having or claiming to have any interests therein, and against all persons lawfully intervening in their interests therein, that they may be cited to appear and answer all the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the sum and amount of $15,700 to this libellant, as and for damages by reason of the premises aforesaid, together with costs, and that the said steamship may be condemned and sold to pay the same, and that the libellant aforesaid may have such other and further relief in the premises as in law and justice he may be entitled to receive.

(S.) CLINTON JAMES HUTCHINS,
Libellant.

(S.) THOMPSON, MILVERTON & CATHCART, C.
Proctors for Libellant.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Clinton J. Hutchins, the libellant named in the foregoing libel, being first duly sworn, deposes and says, that he is the libellant named in the foregoing libel; that he has read said libel and knows the contents thereof, and that the matters and things therein alleged are true of his own knowledge, except as to such matters as may be therein stated upon information or belief, and that as such matters he believes it to be true.

(S.) CLINTON JAMES HUTCHINS.

Subscribed and sworn to before me this 4th day of April, A. D. 1916.

(S.) BERNICE K. DWIGHT,
Notary Public, First Judicial Circuit, Territory of Hawaii. [17]

Let process issue as prayed for.

Dated at Honolulu, this 4th day of April, A. D. 1916.

(S.) CHAS. F. CLEMONS,
Judge of the United States District Court, in and for the District and Territory of Hawaii. [18]

UNITED STATES MARSHAL'S OFFICE.
MARSHAL'S RETURN.

Received the within libel and order on the 4th day of April, 1916, and return the same as executed upon the American steamship "Great Northern" by exhibiting original libel and order to Chief Officer Wall

of said vessel (he being in charge), and by handing and leaving with him a certified copy of libel and order and by posting public notices of attachment on the foremast and mainmast of said vessel and by leaving Manuel Olsen in charge as custodian, this 4th day of April, 1916.

(S.) J. J. SMIDDY,
U. S. Marshal.

MARSHAL'S RETURN.

Received the within libel and order on the 4th day of April, 1916, and return the same as executed upon F. L. Waldron & Co., Ltd., agents for the American steamship "Great Northern," by exhibiting original libel and order to Fred L. Waldron, President of F. L. Waldron & Co., Ltd., and by handing to and leaving with him a copy of libel and order, this 4th day of April, 1916.

(S.) J. J. SMIDDY,
U. S. Marshal.

[Endorsed]: No. 147. (Title of Court and Cause.) Libel in Rem. Filed Apr. 4, 1916, at 2 o'clock and 15 minutes P. M. (S.) George R. Clark, Clerk. [19]

In the District Court of the United States, in and for the Territory and District of Hawaii.

IN ADMIRALTY—LIBEL IN REM.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," Whereof A. AHMAN, Whose Full Name is Unknown, is and Was Lately Master and Captain, Her Tackle, Apparel, Furniture, Boats and Appurtenances and Against All Persons Having or Claiming to Have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein,

Libellee.

Claim.

To the Honorable CHARLES F. CLEMONS, Judge of the United States District Court for the District and Territory of Hawaii:

A. Ahman, master of the American steamship "Great Northern," and the lawful bailee thereof, and of her tackle, apparel, furniture, boats, and appurtenances, now lying in the harbor of Honolulu in said territory of Hawaii, now appears before this Honorable Court and claims the said steamship "Great Northern," her tackle, apparel, furniture, machinery, boats, and appurtenances, and states that he is the master of said vessel and the true and lawful bailee thereof and entitled to intervene in the above-

entitled cause on [20] behalf of the steamship "Great Northern," her tackle, apparel, machinery, boats, furniture and appurtenances.

And said claimant prays this Honorable Court to be admitted to defend in said cause on behalf of the owners of said vessel, her tackle, apparel, machinery, boats, furniture, and appurtenances, and that this Honorable Court will be pleased to decree a restitution of said vessel, her tackle, apparel, machinery, boats, furniture, and appurtenances, and otherwise administer right and justice in the premises.

Dated, Honolulu, T. H., April 4, 1916.

(S.) A. AHMAN,

Master of the American Steamship "Great Northern," Her Tackle, Apparel, Machinery, Boats, Furniture and Appurtenances.

United States of America,
Territory of Hawaii.

A. Ahman, being first duly sworn, deposes and says that he is the master of the said steamship "Great Northern," and the lawful bailee thereof, as well as of her tackle, apparel machinery, boats, furniture and appurtenances, and that as such bailee thereof is authorized to make and file the foregoing claim on behalf of the owners thereof; that he has read the said claim and knows the contents thereof and that the matters therein set forth are true; and that the said steamship "Great Northern" is an American vessel owned by the Great Northern Pacific Steamship Company, whose [21] principal place of

business is more than one hundred miles from said Honolulu.

(S.) A. AHMAN.

Subscribed and sworn to before me this 4th day of April, 1916.

(S.) RAY B. RIETOW,
Deputy Clerk, United States District Court, Territory of Hawaii.

[Endorsed]: No. 147. (Title of Court and Cause.) Claim. Filed Apr. 4, 1916, at 3 o'clock and 30 minutes P. M. George R. Clark, Clerk. By (S.) Ray B. Rietow, Deputy Clerk. [22]

Order Continuing Hearing on Libellee's Exceptions to Libel and Order Assigning Case to Judge Vaughan.

From the Minutes of the United States District Court, Vol. 10, page 97, Wednesday, May 31, 1916.

(Title of Court and Cause.)

On this day came Mr. F. M. Milverton, of the firm of Thompson, Milverton & Cathcart, proctors for the above libellant, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, proctors on behalf of the libellee herein and this cause was called for disposition. Thereupon the libellee having filed their exceptions to the libel, with consent of respective proctors, it was by the Court ordered that this cause be continued for hearing on libellee's exceptions

to libel. Thereafter Judge Clemons ordered that this case be assigned to Judge Vaughan. [23]

Consent of Libellee to Exceptions to Libel Being Overruled Pro Forma and Order Allowing Claimant Ten Days Within Which to Answer.

From the Minutes of the United States District Court, Vol. 10, page 244, Monday, November 13, 1917.

(Title of Court and Cause.)

On this day came Mr. J. W. Cathcart, of the firm of Thompson, Milverton & Cathcart, counsel for the above libellant, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, counsel for the libellee, herein, and this cause was called for disposition. Thereupon Mr. Warren stated that libellee consented to exceptions to libel being overruled *pro forma* and that claimant be allowed ten days to answer, which was by the Court so ordered. [24]

In the District Court of the United States, in and for the Territory and District of Hawaii.

IN ADMIRALTY—LIBEL IN REM.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," Her Tackle, Apparel, Furniture, Boats and Appurtenances and Against All Persons Having or Claiming to Have Any Interest Therein and Against All Persons Lawfully Intervening in Their Interests Therein,

Libellee,

and

A. AHMAN,

Master and Claimant.

Answer of Claimant.

To the Honorable HORACE W. VAUGHAN, Judge of the United States District Court for the Territory of Hawaii:

Now comes A. Ahman, claimant herein, and the lawful bailee of the American steamship "Great Northern," the libellee in the above-entitled cause, and for answer to the libel of the above-named Clinton J. Hutchins, libellant, herein, alleges as follows:

I.

With respect to the allegations of paragraph 1 of said libel, this claimant has no direct knowledge; but,

basing his answer thereto upon his information and belief, this claimant [25] denies the same.

II.

This claimant admits the allegations of paragraph 2 of said libel; and with respect thereto, further alleges that the said steamship "Great Northern," its owners and officers, did in fact accordingly furnish and provide the libellant with all suitable, requisite, safe and proper appliances, conditions, facilities, and service for a safe passage on said vessel without harm or injury to himself, including a safe and proper place for bathing and safe and proper bath-rooms, equipment and appliances for the bath.

III.

Answering the allegations of paragraph 3 of said libel, this claimant denies that the bath-rooms or any of them on said vessel were negligently constructed or were dangerous or unsuitable for the purposes of bathing; and more especially denies that the rooms or any of them fitted up as and for shower-baths on said vessel were carelessly or negligently constructed or were dangerous or unsuitable for the purpose of taking a shower-bath therein; and further denies that the construction thereof was faulty, improper, unsafe, or dangerous.

And this claimant further denies that said floor bowls were in any respect more slippery to stand upon or in than any porcelain floor or other clean and sanitary bath fixture; and denies that there was no provision by means of rails or otherwise for grasping or holding on in case of slipping.

IV.

Answering the allegations of paragraph 4 of said libel, this claimant has no knowledge except by information from others, but basing his answer thereto upon his information and belief [26] and, while admitting that the libellant, while using or attempting to use the shower-room or compartment on the port side in the bath-room on "C" deck of said vessel, lost his balance and fell and sustained some bruises or injury, the exact nature and extent of which are to this claimant unknown, yet this claimant denies that said accident occurred or injuries were sustained by reason of any negligent, careless or faulty construction of the said bath or shower-room or accommodations, but were in fact the result of failure of the libellant to exercise common care in view of the motion of said vessel while so traveling on the high seas. And claimant further denies that the injuries received by said libellant were so serious as to prevent him from carrying on his regular business.

Claimant further denies that libellant has sustained or is sustaining loss by reason of said accident and denies that he was thereby obliged to remain in Honolulu; and generally denies all allegations of damage made by said libellant in said libel.

V.

Further answering said libel this claimant alleges as follows:

(1) That the steamship "Great Northern," whereon the libellant engaged and had passage from San Francisco to Honolulu, upon the voyage de-

scribed in the libel herein, was at all of the times mentioned in said libel provided with numerous bath-rooms, some fitted with porcelain tubs and others with showers, and all of the latest, modern, and most commodious and practical design and equipment.

(2) That it was at all times optional with the libellant [27] whether or not he would use a shower-bath, or a tub-bath, or any bath at all, on said voyage.

(3) That at all of the times mentioned in said libel the shower-bath referred to in the said libel as that in which or in connection with which the libellant is alleged to have been injured was and is a room approximately thirty inches square, having its walls made of upright marble slabs, open in front and having a pipe overhead and across the front as a curtain rod or support carrying sliding rings for front curtain; that the floor thereof was formed by a porcelain basin of the most approved and modern material and type, measuring approximately twenty-four inches square, practically level having no more slope than was and is necessary for proper drainage, and having sides about six inches above the level of the outside floor. That the said basin or floor was not difficult to stand in or upon, nor was the said bath-room or its equipment in any respect unsafe or dangerous, or carelessly or negligently constructed, or likely in any manner to cause a person using the same to slip or fall.

(4) That the said shower bath-room was and is provided with a metal handle plainly visible and firmly fixed on the back wall at a convenient height

for any person to reach, for instant use if desired; besides which there were a number of other convenient and immediately accessible means of support in and about the said shower bath-room; all of which were plainly visible and conveniently available and useful for the purpose of being taken or used by any person using the said shower bath-room should occasion require or such use thereof seem desirable.

(5) That said floor or basin was made of porcelain which is the usual and approved material for such purpose, to insure [28] cleanliness, and was clean and no more slippery than any other porcelain bath.

(6) That the whole method of construction, the form, the materials used, and the facilities provided and available for holding, and the condition of said bath as to being slippery or otherwise, were all plainly visible to the libellant.

(7) That the said shower-bath room was well lighted by electric light.

(8) That the placing of rubber mats or other floor covering in the basin or floor of the shower bath-rooms was and is not necessary, efficient or of value in rendering the floor any more safe to stand in or upon consistently with proper cleanliness and practical use thereof; and that the said bath-room was proper and safe both in construction and equipment.

(9) That said accident occurred while the said vessel was traveling on the high seas, and if the libellant sustained any injury to himself by reason of having slipped or fallen while using the said bath-

room such injury was occasioned solely and only by the carelessness and negligence of the libellant in his use thereof and in not taking reasonable care or precaution to guard against the same under the conditions and motion of the said vessel at sea; and that the same occurred without any fault or negligence whatsoever on the part of the libellee, or its owners, or its officers or servants on board said vessel.

(10) That said alleged injury was not in any manner caused or contributed to by the style or method of construction or equipment of the said shower-bath room.

(11) That the libellant failed to give proper attention to his alleged injury and neglected the same, and thereby greatly aggravated his injury and increased his pain and suffering [29] therefrom, and prejudiced and prevented the normal healing thereof.

(12) That the libellant was not in fact either seriously or permanently injured or disfigured.

(13) That the libellant has not sustained any injury which will in any way incapacitate him or prevent the free and entire use of his left arm and hand as theretofore.

VI.

This claimant further alleges that said libellant knowingly and voluntarily assumed whatever risk of accident there was in using the said shower bath.

WHEREFORE this claimant prays that this Honorable Court will be pleased to pronounce against the libel aforesaid and to condemn the libellant in costs

and otherwise administer law and justice in the premises.

Dated, Honolulu, T. H., November 18th, 1916.

(S.) A. AHMAN,
Claimant.

United States of America,
Territory of Hawaii,—ss.

A. Ahman, being first duly sworn, says that he is the master of the steamship "Great Northern," and the lawful bailee thereof, as well as of her tackle, apparel, furniture, boats, and appurtenances, and that as such bailee thereof he is authorized to make and file the foregoing answer in behalf of the owner thereof. That he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief. That the steamship "Great Northern" is an American vessel owned by the Great Northern Pacific Steamship [30] Company, whose place of business is more than one hundred miles from Honolulu.

(S.) A. AHMAN.

Sworn and subscribed to before me this 18th day of November, 1916.

(S.) JAMES M. LAIRD,
Notary Public in and for the City and County of Honolulu, Territory of Hawaii.

SMITH, WARREN & SUTTON,
Proctors for Claimant.

[Endorsed]: No. 147. (Title of Court and Cause.) Answer of Claimant. Filed Nov. 23, 1916, at 1 o'clock and 35 minutes P. M. George R. Clark, Clerk. By (S.) Wm. L. Rosa, Deputy Clerk. [31]

Order Granting Opening of Depositions Extending Time to December 23, 1916, for Hearing on Motion.

From the Minutes of the United States District Court, Vol. 10, page 279, Monday, December 18, 1916.

(Title of Court and Cause.)

On this day came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, counsel on behalf of the libellee herein, neither the above libellant nor his counsel being present, and this cause was called for hearing on motion to open depositions and set cause for hearing. Thereupon with consent of respective counsel in this cause, it was by the Court ordered that hearing on motion to set cause for hearing be continued to December 23, 1916, at 10 o'clock A. M. Thereafter the Court granted the motion to open the depositions herein and said depositions were opened by the clerk in open court. [32]

Order Entering Name of Geo. A. Davis as Associate Proctor for Libelant, Proceedings at Trial and Order Continuing Cause to February 17, 1917, for Further Trial.

From the Minutes of the United States District Court, Vol. 10, page 355, Friday, February 16, 1917.

(Title of Court and Cause.)

On this day came the above-named libellant in per-

son and with Mr. Geo. A. Davis, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, proctors for the libellee, and this cause was called for trial. Thereupon Mr. Davis asked that his name be entered as associated with the firm of Thompson, Milverton & Cathcart, proctors for the said libellant which was by the Court so ordered. Thereafter, Clinton J. Hutchins, said libellant, was called and sworn and gave testimony on his own behalf. Mr. Davis then presented an amendment to the Libel herein, which was by the Court allowed, and the time for adjournment having arrived, it was by the Court ordered that this cause be continued to February 17, 1917, at 9 o'clock A. M., for further trial. [33]

Amendment to Libel.

4a. AND THE SAID LIBELLANT further alleges and charges that it became and was the bounden duty of the said steamship "Great Northern," its owners and the master thereof to employ and keep employed and have on board of said steamship on said voyage hereinbefore set out in this libel a skilful and competent physician and surgeon and it became and was the bounden duty of said steamship, its owners and the master thereof under the marine contract so entered into between this libellant and the said steamship, its owners and master thereof, to employ and keep employed and have on board of said steamship a competent and skilful physician and surgeon to attend to this libellant and to exercise medical care and surgical skill in healing and endeavoring to heal and cure him of the injuries so sustained

by him as a foresaid on board of said steamship on the said 18th day of February, A. D. 1916, and at all other times during said voyage; and it became and was the bounden duty of the said steamship, its owners and the master thereof to exercise the highest degree of care and to endeavor to and use skill, care and render the best possible surgical and medical attention towards this libellant after he sustained the injuries as aforesaid in order to heal and cure him of his injuries and to continue to exercise the highest degree of care and skill towards this libellant after he received the said injuries during the rest of the voyage and until the arrival of said steamship "Great Northern in the port of Honolulu; yet the said steamship, the master and its owners thereof not regarding their duty in that behalf and in violation of the marine contract so entered into as aforesaid [34] and in violation of the duty and obligations arising under said marine contract, the said steamship, the master and owners thereof did not employ and keep employed nor furnish this libellant with a competent physician but had an unskilful, incompetent physician on board said steamship who failed and neglected to give proper care and exercise proper medical skill and attention towards this libellant, which the said steamship, its owners and the master thereof, well knew, and neither the master nor the officers of said steamship nor said incompetent physician exercised proper care, skill and attention towards this libellant at any time during said voyage, and after he had received the injuries so occasioned as aforesaid, the said incompetent physician so employed as

aforesaid treated the injuries sustained by this libellant unskilfully, negligently and improperly, and by reason of the incompetency of the said physician and surgeon so employed as aforesaid, the libellant suffered excruciating pain and torture after he sustained the said injuries as aforesaid and during the remainder of said voyage on said steamship by reason of the failure and neglect of the master and officers of said steamship towards him and because of the incompetency of said physician and surgeon so employed as aforesaid, the said physician and surgeon so employed as aforesaid did not make a proper examination of the broken shoulder joint and injuries so sustained by this libellant, nor did he use proper care and skill in attending to the same but treated it as a bruise and was guilty of gross negligence and the said steamship, the master and owners thereof in violation of said marine contract so entered into as aforesaid between this libellant, the said steamship and the owners and master thereof employed and kept employed said wholly competent physician during all of said voyage with full [35] knowledge that said physician and surgeon was wholly incompetent and unskilful and said steamship, its owners and the master thereof, failed and neglected to render such proper medical care and skill to this libellant as required by the terms of said marine contract so entered into as aforesaid, and failed and neglected to call in the assistance and advice or other physicians and surgeons who were passengers on board of said steamship during said voy-

age, and utterly failed and neglected to exercise the highest or any degree of care towards this libellant.

[Endorsed]: No. 147. (Title of Court and Cause.) Amendment to Libel by Adding Paragraph 4a. Filed Feb. 16, 1917, at 10 o'clock and 20 minutes A. M. (Sgd.) George R. Clark, Clerk. [36]

Proceedings at Trial, etc., and Order Continuing Cause to February 19, 1917, for Further Trial.

From the Minutes of the United States District Court, Vol. 10, page 356, Saturday, February 17, 1917.

(Title of Court and Cause.)

On this day came the above-named libellant in person and with Mr. Geo. A. Davis, one of the proctors for said libellant, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, proctors for the libellee herein, and this cause was called for further trial. Thereupon with consent of respective proctors the libellant herein was withdrawn from the witness-stand and Dr. Clifford B. Wood was called and sworn and gave testimony on behalf of said libellant, Libellant's Exhibit "A" was admitted in evidence and ordered filed. Thereafter the libellant was called and gave further testimony on his own behalf. Dr. W. C. Hobdy was called and sworn and gave testimony on behalf of the libellant, and at the conclusion of which Mr. Davis moved to have the depositions of Francis G. Lefebre et al. opened, which was

by the Court so ordered, whereupon said depositions having been opened, respective proctors read same. Thereafter Dr. George F. Straub was called and sworn and gave testimony on behalf of the libellant, and Libellant's Exhibits "B" and "C" were admitted in evidence and ordered filed, and the time for adjournment having arrived, it was by the Court ordered that this cause be continued to February 19, 1917, at 9 o'clock A. M., for further trial. [37]

Proceedings at Trial, Motion to Strike Certain Testimony and Order Continuing Cause to February 20, 1917, for Further Trial.

From the Minutes of the United States District Court, Vol. 10, page 357, Monday, February 19, 1917.

(Title of Court and Cause.)

On this day came the above-named libellant in person and with Mr. Geo. A. Davis, one of the proctors for said libellant, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, proctors for the libellee herein, and this cause was called for further trial. Thereupon proctors continued with the reading of depositions, whereupon Mr. Davis suggested that the Court read the depositions on file when case submitted, which was satisfactory to Mr. Warren. Thereafter Herbert E. Wescott was called and sworn and gave testimony on behalf of the libellant. With consent of respective proctors, William Paul Metzler was called and sworn for libellee and

Libellant's Exhibit "D" was admitted in evidence and ordered filed. John S. Ford and John George Harrington were called and sworn for libellant, at the conclusion of which libellant closed, whereupon Mr. Warren moved to strike from the record the testimony adduced by the libellant in this case going to the effect that the company had hired an inefficient doctor, which was by the Court taken under advisement. J. B. Morris was called and sworn and gave testimony on behalf of the libellee. Mr. Warren then moved that the depositions read be admitted in evidence, which was by the Court so ordered, and the time for adjournment having arrived, it was by the Court ordered that this cause be continued to February 20, 1917, at 9 o'clock A. M., for further trial. [38]

Proceedings at Trial and Order Continuing Cause to February 21, 1917, for Further Trial.

From the Minutes of the United States District Court, Vol. 10, page 358, Tuesday, February 20, 1917.

(Title of Court and Cause.)

On this day came the above-named libellant in person and with Geo. A. Davis, one of the proctors, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, and this cause was called for further trial. Thereupon Herbert E. Wescott was recalled and gave further testimony on behalf of the libellant, at the conclusion of which, proctors for the

libellant closed. Thereafter Capt. A. Ahman was called and sworn and gave testimony on behalf of the libellee, and it was by the Court ordered that this cause be continued to February 21, 1917, at 2 o'clock P. M., for further trial. [39]

Proceedings at Trial, Order Allowing Libellee Until March 17, 1917, to File Further Depositions and Order Continuing Cause to February 26, 1917, for Further Trial.

From the Minutes of the United States District Court, Vol. 10, page 360a, Wednesday, February 21, 1917.

(Title of Court and Cause.)

On this day came the above libellant in person and with Mr. Geo. A. Davis, one of his proctors, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, proctors for the libellee herein, and this cause was called for further trial. Thereupon Joseph Gould was called and sworn and gave testimony on behalf of the libellee, J. B. Morris was recalled and gave further testimony on behalf of the said libellee, Thomas S. Mills was called and sworn and gave testimony on behalf of the libellee and Libellee's Exhibit 1 was admitted in evidence and ordered filed. Thereafter with consent of respective proctors, libellee was given until March 17, 1917, to file further depositions herein, and this cause was continued to February 26, 1917, at 10 o'clock A. M. for further trial. [40]

Order Directing Issuance of Commission to Take the Deposition of C. W. Wiley, Witness for Libellee, and Continuance to February 26, 1917, for Further Trial.

From the Minutes of the United States District Court, Vol. 10, page 363, Saturday, February 24, 1917.

(Title of Court and Cause.)

On this day came Mr. Geo. Davis, one of the proctors on behalf of the libellant, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, proctors for the libellee herein, and this cause was called for disposition. Thereupon the direct and cross-interrogatories to be propounded to C. W. Wiley, witness for the libellee, were presented, and upon being approved, the Court ordered a commission to issue to take the deposition of the said C. W. Wiley. Thereafter it was further ordered by the Court that this cause be continued to February 26, 1917, at 2 o'clock P. M., for further trial. [41]

Filing Amendment to Answer, Proceedings at Trial and Continuance to February 27, 1917, for Further Trial.

From the Minutes of the United States District Court, Vol. 10, page 365, Monday, February 26, 1917.

(Title of Court and Cause.)

On this day came the above libellant in person and

with one of this proctors, Mr. Geo. A. Davis, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, and this cause was called for further trial. Thereupon Mr. Warren having presented an amendment to the answer heretofore filed and said amendment being approved and ordered filed by the Court, Robert Booth and Frederick Lamb were called and sworn and gave testimony on behalf of the libellee herein. Thereafter with consent of Mr. Warren, Robert B. Hackett was called and sworn and gave testimony on behalf of the libellant, at the conclusion of which, upon motion by Mr. Warren with consent of Mr. Davis, it was by the Court ordered that this cause be continued to February 27, 1917, at 10 o'clock A. M., for further trial. [42]

In the District Court of the United States, in and for the District and Territory of Hawaii.

IN ADMIRALTY—LIBEL IN REM.

No. 147.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," Her Tackle, etc.,

Libellee,

and

A. AHMAN,

Master and Claimant.

Claimant's Answer to Paragraph 4a Filed February 16th, 1917, as an Amendment to the Libel.

To the Honorable HORACE W. VAUGHAN, Judge of the United States District Court for the Territory of Hawaii:

Now comes A. Ahman, claimant herein, and for answer to paragraph 4a filed by the libellant herein on the 16th day of February, 1917, as an amendment to the libel in this cause, alleges as follows:

I.

This claimant denies that the surgeon on board the steamship "Great Northern," upon the voyage described in said libel and in said paragraph 4a thereof, was incompetent, unskillful or negligent in his treatment and care of the libellant; and denies that the said physician when engaged by the owners of said vessel was known to said owners or to the master thereof as being unskillful or incompetent; and denies that then or thereafter at any time [43] up to the time of the injury of libellant complained of the said owners or master knew of any incompetency of the said physician; and denies that the said owners and or master employed or kept the said physician employed, knowing or believing him to be incompetent or unskillful.

WHEREFORE, this claimant renews his prayer set forth in his answer dated November 18th, 1916,

and filed herein November 23d, 1916, in this cause.

(Sgd.) A. AHMAN,
Claimant.

By (Sgd.) SMITH, WARREN & SUTTON,
His Proctors.

[Endorsed]: No. 147. (Title of Court and Cause.) Claimant's Answer to Amendment. Filed February 26, 1917. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [44]

Proceedings at Trial and Continuance to March 1, 1917, for Further Trial.

From the Minutes of the United States District Court, Vol. 10, page 367, Tuesday, February 27, 1917.

(Title of Court and Cause.)

On this day came the above libellant in person and with one of his proctors, Mr. Geo. A. Davis, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Sutton, proctors for the libellee, and this cause was called for further trial. Thereupon Robert J. McAdory was called and sworn and gave testimony on behalf of the libelee, and Libellee's Exhibits 2, 3, and 4 were admitted in evidence and ordered filed, and with consent of respective proctors, it was by the Court ordered that this cause be continued to March 1, 1917, at 10 o'clock A. M., for further trial. [45]

Proceedings at Trial and Continuance to March 6, 1917, for Argument.

From the Minutes of the United States District Court, Vol. 10, page 369, Thursday, March 1, 1917.

(Title of Court and Cause.)

On this day came the libellant in person and with one of his proctors, Mr. Geo. A. Davis, and also came Mr. L. J. Warren, of the firm of Smith, Warren & Whitney, proctors for the libellee herein, and this cause was called for further trial. Thereupon John Waterhouse and J. W. Waldron were called and sworn and gave testimony on behalf of the libellee, at the conclusion of which the libellee having closed, Dr. Wood was recalled on rebuttal and gave further testimony on behalf of the libellant. The libellant herein was recalled and gave further testimony on his own behalf, and both sides having closed, it was by the Court ordered that this cause be continued to March 6, 1917, at 2 o'clock P. M. for argument. **[46]**

Libelant's Exhibit "A"—X-ray Plate, Dr. G. F. Straub.

[Endorsed]: No. 147. In the United States District Court for the Territory of Hawaii. Clinton James Hutchins, Libelant, vs. The American Steamship "Great Northern," etc., Libelee. Libelant's Exhibit "A"—X-ray plates, Dr. G. F. Straub. Filed February 17, 1917, at —— o'clock and —— minutes —— M. George R. Clark, Clerk. ————, Deputy Clerk. [47]

Libelant's Exhibit "B"—X-ray Plate, Dr. W. C. Hobdy.

[Endorsed]: No. 147. In the United States District Court for the Territory of Hawaii. Clinton James Hutchins, Libelant, vs. The American Steamship "Great Northern," etc., Libelee. Libelant's Exhibit "B"—X-ray plate, Dr. W. C. Hobdy. Filed February 17, 1917, at —— o'clock and —— minutes —— M. George R. Clark, Clerk. ————, Deputy Clerk. [48]

Libelant's Exhibit "C"—X-ray Plate, Dr. W. C. Hobdy.

[Endorsed]: No. 147. In the United States District Court for the Territory of Hawaii. Clinton James Hutchins, Libelant, vs. The American Steamship "Great Northern," etc., Libelee. Libelant's Exhibit "C"—X-ray plate, Dr. W. C. Hobdy. Filed February 17, 1917, at —— o'clock and —— minutes —— M. George R. Clark, Clerk. ————, Deputy Clerk. [49]

Libelant's Exhibit "D"—Card of W. P. Metzler.

Great Northern Pacific Steamship Co.
Spokane, Portland & Seattle.

W. P. METZLER.

Pier #7,
Frisco, Cal.

Special Agent.

[On reverse side:] Please call at my office as soon as possible.

W. P. METZLER.

[Endorsed]: No. 147. In the United States District Court for the Territory of Hawaii. Clinton James Hutchins, Libellant, v. The American Steamship "Great Northern," etc., Libellee. Libellant's Exhibit "D" (card of W. P. Metzler). Filed Feby. 19, 1917, at —— o'clock and —— minutes ——M. George R. Clark, Clerk. By Wm. L. Rosa, Deputy Clerk. **[50]**

Libelee's Exhibit No. 1—Letter, Voucher and Requisition.

[Endorsed]: In the District Court of the United States, in and for the District and Territory of Hawaii. C. J. Hutchins, Libellant, vs. The American S. S. "Great Northern," Libellee. Libellee's Exhibit 1. Filed Feby. 21, 1917, at —— o'clock and —— minutes ——M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk. **[51]**

San Francisco, Jan. 4th, 1917.

Mr. T. S. Mills,

Chief Steward "Great Northern."

Dear Sir:

Attached please find original invoice of Muir & Symon of Jan. 25th, 1916, for $427.82 and original requisition S—27 S. S. "Great Northern," which you will please deliver in person to Messrs. Smith, Warren and Sutton, our attorneys at Honolulu, and ask them to kindly return same to this office when they have finished with same.

Yours truly,

J. B. MORRIS,

B.

Marine Superintendent. [51a]

Telephone Kearny 2113

C. W. W. 2387

Anchors & Chains
Bronze Bushings
Metalline
Boat Davits
Chains all sizes B. B.
Black & Galvanized
Derricks
Derrick Irons

MUIR & SYMON

Incorporated

IRON WORKS

Hooks
Mooring Bitts
Shackles
Sheaves
Steel Buoys
Steel Blocks
Stevedoring Trucks
Swivels

Iron Ship Repairers, Engineers and General Blacksmiths Steel and Wood Spar Makers

1011–1017 Battery Street

San Francisco, Cal., Jan. 25, 1916.

Sold to S/S "Great Northern" and Owners.

Our Order No. 86.

Your Order No. Req. #S. 27. H 541

Terms Net Cash

Steward's Dep't.

Range Guard cut in two pieces.

Guard around top of Broilers.
Water Pipe & Faucet in Bakers Shop.
Overhauling Proof Box.
Overhauling Bake Shop Drum & Cleaning Flues.
Repairing Ice Cream Scoop.
Repairing Ice Cream Containers. (Retinning).
Retinning 3—Sauce Pans.
Making I—Movable Table for Bake Shop.
Overhauling Hinges on Door of Bakers Chill Box.
Overhauling Hinge on Door of Butcher Shop.
Overhauling Hinges on Doors of 1st Cabin Pantry.
Repairing Scupper Drain in Refrigerator & Butcher Shop.
Fastening & Renewing 3—Tiles in Kitchen Floor.
Repairing Bench in 1st. Cabin Pantry.
" Table in 2d. " "
Fixing Handle of Faucet on Milk Container, 1st. Cabin Pantry.
Knob on 1st. Cabin Pantry Steam Table.
6—new Guards for Range.
5—Guards for Center Table in Main Kitchen.
1—Table for 1st. Cabin Pantry.
1—new Foot Board.
Strap up Sink in Main Kitchen.
Repairing 24—Deck Chairs.
1—Weather Strip on Pantry Table, Stbd. side.
Repairing 1—Dining Room Chair.
" 1—Chair from Suites.
" 1—Veranda Chair.
" 2—Cane Bottom Chairs,in Smoking Room.
Repairing Overhead Leak in Room 168.
Fastening Backs of all Settees.

Furnishing & Fitting Hooks on all Bath Room Doors in Suites.

Repairing Hot & Cold Water Connections in Showers.

Grab Bars in all Shower Baths.

Overhauling & Replacing Packing on Silver Machine.

Steam to Bakers Oven.

Sharpen Knives, etc.

Asbestos Washers for Chandeliers for D. R.

Asbestos Rings & Stops on Suites & Sofa Lights.

[In pencil:]

O.K.—T. S. MILLS, Chf. Std.

O.K.—W. P. CUYLER.

Forwarded Sheet #2.

Telephone Kearny 2113

Anchors & Chains
Bronze Bushings
Metalline
Boat Davits
Chains all sizes B. B.
Black & Galvanized
Derricks
Derrick Irons

MUIR & SYMON

Incorporated

IRON WORKS

Hooks
Mooring Bitts
Shackles
Sheaves
Steel Buoys
Steel Blocks
Stevedoring Trucks
Swivels

Iron Ship Repairers, Engineers and General Blacksmiths, Steel and Wood Spar Makers

1011–1017 Battery Street

San Francisco, Cal., Jan. 25, 1916.

Sold to S/S "Great Northern" and Owners.

Our Order No. 86.

Your Order No. Req. #S. 27.

Terms Net Cash

Steward's Dep't.

– 2 –

Brot. Forw'd

To Furnishing 3–Wire Handle Stove Knobs .35

" "	50–¼ x ¾ Stove Bolts.....	.18
" "	25–¼ x 1" " "	.15
" "	6–⅜ x ¾" Bolts	.20
" "	1–Sk. of Clay	1.05
" "	6–pcs. 6 x 6 Red Tile	.72
" "	3–30 x 15 x 3 Flanged Ed. Fire Tile	4.80
To Repairing Chairs & Tables.....		29.90
" "	2–Cane Chairs	3.60
To Furnishing	1–pc. of Ash	1.00
" "	1– " 2 x 12 Pine).....	
" "	1– " 1 x 6 ").....	
To Sawing & Planing same	).....	4.13
To Furnishing 39–ft. of Ash 1".....		5.86
" "	15– " " " 1½"	1.80
" "	58– " " Spruce 1"	3.14
To Sawing Spruce as ordered.....		.60
To Furnishing	1–pc. of Belt Leather 7" wide	3.03
" "	1–Gro. ⅞ x 8 F. H. Galv. Screws	.50
" "	1⅓–Doz. 3 x 20 F. H. Brass Screws	.95
" "	1–Handle for Urn Cock	.65
" "	2–Doz. 1½" Brass Screws..	.40
" "	4– " 2" " " ...	1.00
" "	3–lbs. Galv. Nails.....	.35
" "	White Lead	.40
" "	12–Pr. 4" Galv. Port Hinges.	3.25
" "	1–pc. ½" White Sheet Felt, Cut	.30
" "	1–pc. Tire Felt	.36

"	"	1–Brass Casting for Bottle Holder, Machine	1.77
"	"	12–Nickle Plated Hat & Coat Hooks	5.04
"	"	10–Nickle Plated Pulls	7.10
"	"	1–Ice Chest Catch	.55
"	"	½–doz. 3" Bronze Cabin Door Hooks	5.28
"	"	½–doz. 4" Bronze Cabin Door Hooks	5.52
"	"	1–lb. 3D Galv. Wire Fin. Nails	.12
"	"	2–12" N. P. on Brass Hooks & Eyes	.60
"	"	1½ Doz. ⅝ Brass Shoulder Hooks	.18
		Forwarded.....	$94.83

O.K.—T. S. Mills, Chf. Std.

O.K.—W. P. Cuyler.

Telephone Kearny 2113

Anchors & Chains
Bronze Bushings
Metalline "
Boat Davits
Chains all sizes B. B.
Black & Galvanized
Derricks
Derrick Irons

MUIR & SYMON

Incorporated

IRON WORKS

Hooks
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Iron Ship Repairers, Engineers and General Blacksmiths, Steel and Wood Spar Makers

1011–1017 Battery Street

San Francisco, Cal., Jan. 25, 1916.

Sold to S/S "Great Northern" and Owners.

Our Order No. 86.

Your Order No. Req. S. 27.

Terms Net Cash

Steward's Dep't.

– 3 –

		Brot. Forw'd.....	94.83
To Furnishing		1–½ x ¼ x ½ blk plain Tees	.09
"	"	4–¼" " " Ells	.08
"	"	1–½" Jeff Union.....	.24
"	"	2–¼" " "	.29
"	"	2 ¼" x blk Nipples.....	.05
"	"	2 – ¼" x 3 " "	.05
"	"	2 – ¼" Globe Valves.....	1.43
"	"	35'– 1 " of ¼" blk Pipe.....	1.08
"	"	30 – ft. ¾" Gal. Pipe.....	1.98
"	"	1 – ¾" Tee "	.15
"	"	1 – ¾" 45° "	.12
"	"	1 – ¾" Ell "	.05
"	"	1 – ¾" Valve "	.10
"	"	1 – ¾" Union "	.36
"	"	Red Putty.....	.20

"	6 – ¾" Galv. bd. Tees.....	.52
"	1 – ¾" Hgh. Comp. Hose Bibb. sot.....	.85
"	2 – Doz. Copper Rivets....	.18
"	1 – Gro. Hex. Brass Nuts 6/32....	.97
"	25 – Oval Hd. N. P. Screws 8/32x½"....	.23
"	25 – Oval Hd N. P. Wood Screws #10x1".....	.18
"	16 – R. H. Brass Wood Screws #1x3½".... ...	1.32
"	Brass Washers.....	.60
"	50 – R. H. Brass Screws #12x3"...	3.50
"	8 – 5/16x24" Dowel Sticks O. P.	
"	2 – 7/16x4' Dowel Sticks O. P.....	.25
"	½ – pt. Le Pages Glue.....	.30
"	24–Plates, Butler Silver with ⅜ brass tube hole in centre.	7.20
"	23 – ⅜ Spindles.....	5.52
"	46 – ⅛" Lock Nuts.....	.84
"	50 – Sash Rods.....	6.00
To Sharpening	32 Knives, 7 Cleavers & 5 Saws.....	5.35
To Retinning	3 – Sauce Pans.....	3.75
"	1 – large Ice Cream Container...	1.73

To Furnishing Brass					3.28
"	"	Copper	12 #	@ .50 ...	6.00
"	"	Iron	229½#	@ .04½..	10.32

Forwarded....$159.99

[In pencil:]

O. K. T. S. Mills, Chf. Std.

O. K. W. P. Cuyler.

Telephone Kearny 2113

Anchors & Chains
Bronze Bushings
Metalline "
Boat Davits
Chains all sizes B. B.
Black & Galvanized
Derricks
Derrick Irons

MUIR & SYMON

Incorporated

IRON WORKS

Hooks
Mooring Bitts
Shackles
Sheaves
Steel Buoys
Steel Blocks
Stevedoring Trucks
Swivels

Iron Ship Repairers, Engineers and General Blacksmiths, Steel and Wood Spar Makers

1011–1017 Battery Street

San Francisco, Cal., Jan. 25, 1916.

Sold to S/S. "Great Northern" and Owners.

Our Order No. 86.

Your Order No. Req. S. 27, H 541 Terms Net Cash.

Stewards Dep't.

—4—

Brot Forw'd.**				159.99
Forge, Blacksmith & Helper	½	Hr.	@15.00	.94
Machine & Machinist	4¼	"	@ 8.00	4.25
Fitter & Plumber	106½	"	@ 6.50	86.52
Helper	94¾	"	@ 4.00	47.12
Joiner	21½	Days	@ 6.00	129.00

$427.82

[Stamped]: Calculations correct. ER Comp Opr.
O. K.—T. S. MILLS, Chf. Std.
O. K.—W. P. CUYLER.

Prices Correct E Ext. Verified W. F. O. B. San Francisco. S. F. Clark, Purchasing Agent. W. E. Q. C. Material received in good order —— 19—. Charged to ——. Taken to % —— Month.

C. W. WILEY,
Superintendent or Storekeeper.

This is to certify that this bill has not been previously paid. Date 3–21–16. BS, Voucher Clerk.

Vouchered.
Feb. 21, 1916.

PURCHASE REQUISITION.

To Purchasing Agent L. C. G. Requisition No. S #27

The following supplies are needed by Great Northern Pacific S. S. Coy. Please send to Repairs at San Francisco.

DESCRIPTION OF ARTICLES.

Thin wire mesh netting around globes head of beds in suites.
Do around clusters in Dining room.
Grab Bars in all shower baths.
Packing Replaced on Silver Machine & Overhaul New Tables on Veranda.

T. S. MILLS.
[Sign Here]

Approved:
" C. W. WILEY, Marine Supt.
" BLAIR, Port Steward.
" C. O. JONES, General Manager.
Chief Steward.
[Title]
Dated Jan. 20, 1916.
Approved: L. C. GILMORE,
President.

H 541.
2/23.

PURCHASE REQUISITION.

To Purchasing Agent, Requisition No. S #27.

The following supplies are needed by Great Northern Pacific S. S. Coy.

Please send to Stewards Dept. S. S. Great Northern at San Francisco.

1st Cabin Kitchen—Repairs.

Guard around top of Broilers.
Range Guard to be cut in two pieces.
Water pipe & Faucet in Bakers Shop.
Garbage shute stop leaking.
Proof Box Overhauling.
Bake Shop Drum Overhauling & Flues cleaning.
Ice Cream scoop repair.
Ice Cream container retinning.
3 Sauce Pans retinning.
1 New Movable Table for Bake shop.
Hinges on doors of Bakers chill Box overhauling.

Hinge on Door of Butcher shop overhauling.

Hinges on Doors of 1st cabin pantry overhauling.

Scupper drain in refrigerator and Butcher shop repairing.

3 Tiles Kitchen floor fastening and renewing.

Strap up bench in 1st Cabin Pantry repairing.

Strap up Table in 2nd cabin pantry repairing.

Fix handle of faucet on milk container 1st cab pantry.

Knob on 1st cabin pantry steam table.

Need new 6 Guards for range.

Guards for centre table in main kitchen.

One Table for 1st cabin pantry.

one footboard in front of Strap up sink main Kitchen.

24 Deck chairs to repair.

1 Weather strip on pantry table Starb. side.

1 Dining room chair to repair.

1 chair from suites "

1 Veranda Chair "

2 Can Bottom chairs smoking room.

Overhead leak in room 168 (very bad).

Backs of all Setees fall down.

Hooks on all Bathroom doors in suites.
Hot & Cold water connection in showers Bad order.

T. S. MILLS,
[Sign Here]
Chief Steward.
[Title]

Approved: C. W. WILEY,
Marine Superintendent.
" BLAIR,
Port Steward.
" C. O. JONES,
General Manager.

Dated Jan. 20, '16.

Approved: L. C. GILMORE,
President.

Libelee's Exhibit No. 2—Certificate of Recommendation to R. J. McAdory from W. H. Avery, Assistant General Manager, Oriental Steamship Company.

In the United States District Court for the Territory of Hawaii. C. J. Hutchins, Libellant, vs. "Great Northern," Libellee. Libellee's Exhibit 2. Filed Feby. 27, 1917. —— o'clock and —— minutes —— M. A. E. Harris, Clerk. Wm. L. Rosa, Deputy Clerk. [52]

Office of
William H. Avery,
Assistant General Manager.

Merchants National Bank Bldg.
625 Market St.

Cable Address "Toyokisen."

TOYO KISEN KAISHA.

(Oriental Steamship Co.)

IMPERIAL JAPANESE AND
U. S. MAIL LINE.

Per S. S. ————————

In Your Reply Please Refer to No. T–1

San Francisco, November 11th, 1914.

TO WHOM IT MAY CONCERN:—

This is to the effect that Dr. R. J. McAdory was engaged in this Company's service as Ship's Surgeon from September, 1913, to May, 1914, and during the time he served in that capacity his services were found to be eminently satisfactory and we would have no hesitancy in recommending him to anyone desiring the service of a gentleman of his capability.

W. H. AVERY.

Libelee's Exhibit No. 3—Certificate of Recommendation to Dr. R. J. McAdory from Philip Mills Jones, Secretary of Medical Society of the State of California.

In the United States District Court, Territory of Hawaii. C. J. Hutchins, Libellant, vs. "Great Northern," Libellee. Libellee's Exhibit 2. Filed Feby. 27, 1917. —— o'clock and —— minutes —— M. A. E. Harris, Clerk. Wm. L. Rosa, Deputy Clerk. [53],

OFFICE OF THE

MEDICAL SOCIETY OF THE STATE OF CALIFORNIA,

SAN FRANCISCO, CALIFORNIA.

Publications
California State Journal of Medicine—Monthly
Official Register and Directory—Annually

BUTLER BUILDING,

135 STOCKTON ST., SAN FRANCISCO, CAL.

TELEPHONE DOUGLAS 2537.

Nov. 12, 1914.

TO WHOM IT MAY CONCERN:

This is to convey to you the information that Dr. R. J. McAdory is a regularly graduated physician, licensed to practice in this State, and for some time has been known favorably to this office.

Respectfully,

PHILIP MILLS JONES,
Secretary.

P. M. J.—P. M.

Libelee's Exhibit No. 4—Certificate of Recommendation to Dr. R. J. McAdory from E. Anderson, Master of Steamship "Honolulan."

In the United States District Court, Territory of Hawaii. C. J. Hutchins, Libellant, vs. "Great Northern," Libellee. Libellee's Exhibit 4. Filed Feby. 21, 1917. —— o'clock and —— minutes —— M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk. [54]

S. S. HONOLULAN,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY.

Cable Address
"Amhawaii"
New York, San Francisco
Honolulu

Aug. 25th, 1915.

To Whom It May Concern:

This is to certify that Dr. R. J. McAdory was Surgeon on the S. S. Honolulan of the American Hawaiian S. S. Co. plying between San Francisco and New York, via The Panama Canal since November, 1914, to the present date.

His services were entirely satisfactory and were only terminated when the Company discontinued its passenger business.

E. ANDERSON,
Master.

Filed Oct. 4, 1917, at 3 o'clock —— min. ——P. M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk. [55]

In the United States District Court, in and for the Territory of Hawaii.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellants.

Index.

FOR LIBELANT:	Direct.	Cross.	Redirect.	Recross.	Court.
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Dr. W. C. Hobdy	110	115	—	—	116
Dr. G. F. Straub	123	131	—	—	—
Dr. W. C. Hobdy, recalled	133	—	—	—	—
H. E. Westcott	137	140	141	—	—
John S. Ford	163	—	—	—	—
Dr. J. G. Harrington	167	—	—	—	—
John S. Ford, recalled	—	170	—	—	—
H. E. Westcott, recalled	196	—	—	—	—
Alfred Hackett	284	295	—	—	296
Dr. C. B. Wood, recalled	353	357	—	—	—
C. J. Hutchins, recalled	361	—	—	—	—
FOR LIBELEES:					
W. H. Metzler	146	151	—	—	—
J. B. Morris	175	—	—	—	—
A. Ahman	199	216	—	—	—
Joseph Gould	228	230	—	—	—
J. B. Morris, continued	235	248	—	—	—
Thomas S. Mills	261	265	—	—	—
Robert B. Booth	272	275	—	—	—
Frederick Lamb	280	—	—	—	—
Dr. Robert J. McAdory	299	322	—	—	—
John Waterhouse	343	348	—	—	—
J. W. Waldron	350	351	—	—	—

In the United States District Court, in and for the Territory of Hawaii.

Before the Honorable HORACE W. VAUGHAN, Judge of said Court.

AD. 147—IN REM.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellee.

Transcript of Testimony.

APPEARANCES:

Messrs. THOMPSON, MILVERTON & CATHCART, and by GEORGE A. DAVIS, Esq., for Libellant.

Messrs. SMITH, WARREN & SUTTON, by L. J. WARREN, Esq., for Libellees.

Friday, February 16, 1917.
10:00 A. M.

Mr. DAVIS.—Your Honor, I wish to have my name entered on the record as associate counsel with Thompson, Milverton and Cathcart in this case. We are ready to proceed.

Mr. WARREN.—I wish to refer to the situation which has existed [56] heretofore, and the reason for setting the case a little in advance of the arrival

of the "Great Northern," so as to permit this case to be put on so that the defendant's case might be tried while the vessel is in port.

Mr. DAVIS.—All right. Is your Honor familiar with the libel in this case or do you want it read?

The COURT.—No, I am not familiar with it.

Mr. DAVIS. There has been a lot of testimony taken by depositions under stipulation, there is no trouble with that.

The COURT.—All right. There is no necessity for reading the libel through. Just state the substance of the libel.

Mr. Davis reads the substance of the libel to the Court.

Mr. DAVIS.—Before proceeding to trial, I wish to move to amend the libel by adding a paragraph, which I now serve counsel with a copy of, paragraph marked No. 4–A (reads), and I therefore move to have this article added to the libel.

Mr. WARREN.—If your Honor please, this motion does come as a surprise, a great surprise. It contains allegations of entirely new matter not touched upon in the original libel, namely, the employment by the company of an incompetent physician and surgeon, an unskilled man, with knowledge on the part of the company of his incompetency, and I submit that the introduction of the new issue in the case at this time, while your Honor may allow it, it should be on the terms namely that depositions should be allowed to issue from this Court to take the testimony of a witness who is residing at San Francisco whose testimony is absolutely necessary

to meet that issue of which we have heretofore [57] had no notice whatever.

The COURT.—The original libel does not say anything about the incompetency of the physician.

Mr. WARREN.—It alleges incompetency but it makes no reference whatever of the employment by the company with knowledge of incompetency. The distinction is this, it is perfectly easy for any plaintiff to make sweeping assertions of incompetency of a doctor, but that imposes no liability on the steamship company unless that steamship company had knowledge of that incompetency and so employed him. There has been nothing of that issue here and depositions have been taken and that ground would have been thoroughly covered had it been an issue. I do not object to that if terms are allowed enabling us to secure the necessary testimony of the only witnesses who know and who reside in San Francisco and Portland.

The COURT.—I don't doubt that you are allowed to amend the libel, and under your allegations in the reply I realize also that the strict technical rules do not govern in these admiralty trials. Even under the original bill your proof in this matter would have been admitted and counsel be given an opportunity to rebut it, and even after the close of the proof—counsel simply wants to be sure that he will be given an opportunity to meet it. It occurs to me that it might cause delay because he wanted to prove that the ship had no knowledge of this incompetency even if you prove incompetency.

Mr. DAVIS.—I haven't got to prove that it was

called to their attention— [58]

The COURT.—All right, Mr. Davis, there is no need to decide these matters before we get to them. I will allow you to amend your libel and I state now that I will allow this amendment you offer and at the same time I will state that counsel will be given an opportunity to meet this issue. Of course, I expect you to use despatch in getting this testimony.

Mr. WARREN.—I want it clear on the record that it will be necessary to take depositions on that issue.

The COURT.—All right. I understand there is no dispute but that the claimant was a passenger on board the steamer and what the marine contract was?

Mr. WARREN.—Yes, that is all right, your Honor. In view of the additional amendment we expect to meet the issue of incompetency of the physician and knowledge of any incompetency on the part of the ship.

The COURT.—This amendment you made, does it allege negligence in the employment of the physician and that they have knowledge of it?

Mr. DAVIS.—Yes, your Honor. Now, as to a reasonable time for proof, your Honor, I will take up that question with your Honor as to counsel being allowed a reasonable time to meet that testimony, but he has to meet it on the trial. I don't think he has any right to depositions, he must have his witnesses here, the time for depositions is past. This is the hearing, now let him bring them here. He is the libellee in this suit and I want to fight that out when the proper time comes.

(Testimony of Clinton J. Hutchins.)

The COURT.—I know in a general way that the management of this ship is in San Francisco *of* Philadelphia— [59]

Mr. DAVIS.—Your Honor, they have a general agent representing them here, Waldron & Company. And I ask that counsel be directed to proceed with despatch in the trial of this case. I think he will, he is that kind of a man. Call Mr. Hutchins. [60]

Testimony of Clinton J. Hutchins, in His Own Behalf.

Direct examination of Mr. CLINTON J. HUTCHINS, for libellant, sworn.

Mr. DAVIS.—Mr. Hutchins, what is your name, please?

A. Clinton James Hutchins.

Q. And where do you reside, Mr. Hutchins?

A. Well, I suppose all over.

Q. I mean where is your residence lately?

A. At the present time, Berkeley.

Q. In the State of California? A. Yes, sir.

Q. How old are you, Mr. Hutchins?

A. I am 47 now.

Q. What business were you in—following, in the month of February, 1916?

A. Well, I was a broker, and president of a farming company in California.

Q. What is that?

A. I was a broker, and president of a farming, a development company.

(Testimony of Clinton J. Hutchins.)

Q. In connection with that business, were you engaged in the buying and selling of land?

A. Not in selling land, but in buying land and developing of land.

Q. Developing land for farming and other agricultural purposes? A. Yes.

Q. How long had you been engaged in that business?

A. About two years, two and a half or three years.

Q. Now, previous to that, what business were you in, Mr. Hutchins? **[61]**

A. Previous to that?

Q. Yes.

A. I was in the insurance business for twenty years.

Q. Now, were you engaged in that business up to the 14th of February, before you left California?

A. Well, I was engaged in the brokerage business, and also in this land company.

Q. Well, do you have your business in San Francisco or Berkeley? A. San Francisco.

Q. San Francisco. Now, what were your earnings from your business at that time, per month?

Mr. WARREN.—Just a moment, I would like to have that question made more definite, and confined to a particular business. Two have been mentioned.

Mr. DAVIS.—From the business that you were then engaged in, what was your income?

A. Why, my income was above, along fifteen to twenty thousand dollars a year from all of my investments or activities.

(Testimony of Clinton J. Hutchins.)

Q. At any time was it ever less than fifteen thousand dollars?

Mr. WARREN.—I object to the question as leading.

Mr. DAVIS.—I will withdraw the question.

The COURT.—All right, proceed.

Mr. DAVIS.—What was the minimum that you earned, the minimum amount?

A. Well, it would be a little difficult to tell, because sometimes I would make a great deal of money and sometimes less. I think it would average about fifteen or twenty thousand dollars a year.

Q. Then fifteen thousand dollars would be the minimum? **[62]**

Mr. WARREN.—I object to the question—

A. I think so.

The COURT.—Objection sustained, although it has been answered.

Mr. DAVIS.—On the 14th of February, did you apply for a passage on board the "Great Northern?"

Mr. WARREN.—That is admitted.

The COURT.—You don't need to go into those matters which are admitted, Mr. Davis.

Mr. DAVIS.—All right, then let us have it specified now at the hearing, that Mr. Warren admits under the allegations of the libel that on the 14th of February the libellant with his wife took passage on the steamship "Great Northern" then lying in San Francisco, in the State of California, for a voyage to the port of Honolulu, in the Territory and District of Hawaii and return therefrom to the port

(Testimony of Clinton J. Hutchins.)

of San Francisco, and that the passage was a first-class passage and that he paid full-class rates, do you make that admission?

Mr. WARREN.—All except to the return, of which I have no knowledge.

A. Yes, I have a return ticket, Mr. Warren.

Mr. DAVIS.—You paid money into the office of the steamship company and received your tickets?

A. Yes, sir.

Q. For that voyage? A. Yes, sir.

Q. And you and your wife departed on that steamship on her voyage from Frisco to Honolulu on what date? A. On the 14th of February, 1916.

Q. Now, did anything happen about the 18th of February that was unusual? A. No, sir. **[63]**

Q. No. Now, on the 18th of February, Mr. Hutchins, in your own language, just state what did happen to you on board the steamship "Great Northern."

A. On the night before, on the 17th, I told the bath steward that I would like to have a shower-bath in the morning about half-past six, and he came and called me about half-past six and I got up and threw on my overcoat over my pajamas and went into the bath, and I hung up my overcoat and my pajamas and I went over to the bath and I turned the water on. There were two shower-baths facing each other, and I used the one facing the shower-baths on the right, and I went up to the shower-bath and put my hand in and put my right foot over into the bath,—it was rather a high bath, high-sided

(Testimony of Clinton J. Hutchins.)

bath, rather hollow, and I put my foot in it and felt of the water, the temperature of it on my arms, and then I put my left foot over, and then I slipped, and I put my hand out to catch hold of something and I fell over into the other shower-bath which was on the opposite side.

The COURT.—You mean on the other side?

A. Yes, I fell sideways, and I reached out for something to get hold of, but there was nothing to hold on to, and I felt a crunching in my shoulder, my arm slipped out from under me, so much so that it seemed to me that I dislocated the shoulder. It went out so far that my arm went right against my head. I endeavored to get up but my whole arm was useless, and I didn't seem to be able to get my breath. I was rather astonished at the feeling that I had in my arm, a peculiar feeling. The man came in at the **[64]** time I took the shower-bath, and it occurred to me at the time why that man didn't come to help me.

Mr. DAVIS.—Q. He come in? A. Yes.

Q. Render you any assistance?

A. He then came and he put an arm under my neck here, and there was a little door at the end of this passage between the shower-baths, and I reached up and got hold of the knob of the door and he lifted me up and I got up still gasping for breath. I walked over to the place where I first proceeded to take off my slippers, and as I sat down I couldn't simply breathe, my heart seemed to flutter a good deal, and he evidently saw my condition because he

(Testimony of Clinton J. Hutchins.)

picked up a lot of water in his hands from the basin there and threw some water in my face and I seemed to recover and feel better.

Q. Going back, and pay attention to me, now going back to the time you fell, was both feet in this basin?

Mr. WARREN.—I object to the question as leading.

Mr. DAVIS.—Where were both feet?

A. In the basin.

Q. Just before you fell just fully describe what you reached for and what you did particularly.

A. Why, as I pulled my left foot up and over following the right as I felt of the water and was going to get in the shower, the water was coming down very heavily, it was instantaneous, I put both feet in and I reached out to grab for anything.

Q. Was there anything for you to reach hold of?

A. Nothing.

Q. Where did you grab for, where did you reach for? **[65]**

A. Anything to get hold of.

Q. Your face was towards the back part of the bath? A. Yes.

Q. And how did you reach out?

A. I reached out as hard as I could with my right arm.

Q. And there was nothing to catch hold of?

A. No.

Q. Nothing there at that time—

Mr. WARREN.—That is leading him.

(Testimony of Clinton J. Hutchins.)

Mr. DAVIS.—All right. What condition was the surface of tub,—of the basin in at that time?

A. It was porcelain. It was filled with water and very slippery.

Q. Did you say the surface was slippery?

A. Very.

Q. What was the condition of the sea at that time?

A. Why, it was calm. I didn't notice any movement that morning. It was the only morning we had when there seemed to be none.

Q. Was the ship rolling or pitching?

A. Not that I noticed.

Q. You didn't notice it? A. No, sir.

Q. How large is this compartment, this shower-bath? A. The bath itself?

Q. Yes, the bath itself, in your judgment.

A. I think the bowls are about two and a half feet square and perhaps five or six inches deep, slightly concaved towards the center with a drain in the center of the bowl.

Q. And the sides of it, how are they made up?

A. Three sides of marble, polished marble. As I stepped in facing the back of the bath there were two pipes running up. [66]

Q. Now, at the back of this bath was there any handle to catch hold of in that particular shower-bath?

A. No handle that I know of either on the side or at the back of the bath.

Q. Neither at the back nor on the side?

A. None whatever.

(Testimony of Clinton J. Hutchins.)

Q. Now, could you have caught hold of the sides of these marble slabs?

A. If there had been any handle there I certainly wouldn't have fallen over. I could have held myself up.

Mr. WARREN.—The answer is not responsive, your Honor, I move it be stricken.

Mr. DAVIS.—I submit it is proper and competent.

The COURT.—Read the question and answer.

(Last question and answer read.)

Mr. DAVIS.—All right; that is not in answer to my question. Could you have caught hold and saved yourself from falling by catching hold of the side of this marble slab of the bath? A. No.

Q. If there had been a handle at the back of this shower-bath to catch hold of would you have fallen?

Mr. WARREN.—I object to the question as calling for the conclusion of the witness.

Mr. DAVIS.—I submit it is proper and competent testimony. It is a statement of his opinion of what he could have done, it is all through the depositions there.

The COURT.—I noticed you said would, you used the word would instead of could.

Mr. DAVIS.—I will use the word could, and thank you Honor [67] for the suggestion.

A. That would depend, Mr. Davis, how far the handle protruded from the back. If it was close to the slab I certainly couldn't have gotten hold of it. If it had been on the other side or had been extended at all I could have saved myself.

(Testimony of Clinton J. Hutchins.)

Q. If it had protruded a few inches you could have saved yourself? A. Yes, a few inches.

The COURT.—It is now noon. Recess until two o'clock. [68]

February 16, 1917, 2:00 P. M.

Direct Examination of CLINTON J. HUTCHINS, Continued.

Mr. DAVIS.—Now, Mr. Hutchins, when we took the recess, I was asking you with reference to this hand-rail at the end of that particular shower-bath. Was there any such a hand-rail there?

A. There was not.

Q. If a hand-rail had been there projecting at a reasonable and proper distance, in your opinion would you have fallen?

Mr. WARREN.—I object to the question as calling for the opinion of the witness.

Mr. DAVIS.—I submit it is a question of his right to decide upon. Their whole depositions are filled up with that stuff.

Mr. WARREN.—Would you have fallen?

The COURT.—Well, of course, it is a matter of opinion. I sustain the objection.

Mr. DAVIS.—Do you believe you would have fallen if you could have gotten hold of that?

Mr. WARREN.—Same objection, your Honor.

The COURT.—Objection sustained.

Mr. DAVIS.—At all events it was not there when you reached out there?

A. It was not.

Q. And then you fell? A. I did. [69]

(Testimony of Clinton J. Hutchins.)

Q. Yes. Was there any apparatus of any kind there in the back of that bath or on the sides to catch hold of, on the slabs, I mean?

A. On the left-hand side there was a couple of pipes—

Q. No, I mean projections, apparatus made for the purpose of catching hold of? A. No, nothing.

Q. Now, you say there was a couple of pipes. You mean by that one for conducting hot and the other cold water to the bath?

A. I suppose so, I don't—

Q. Yes, and they was tight against the wall, wasn't they? A. Yes.

Q. Yes, and you couldn't have got your hand around them? A. No.

Mr. WARREN.—I don't want to be interrupting all the time, but these questions are leading, your Honor.

Mr. DAVIS.—Well, could you have gotten your hand around? What difference does it make, the pipes are up against the slabs as I understand it.

A. I couldn't have gotten my hand around them. My feet flew out from under me and I fell like a catapult. I threw out my left hand to break the fall and struck on my elbow.

Q. There is a big difference between a zinc floor and a porcelain floor, a zinc surface to a porcelain surface?

Mr. WARREN.—I object to the question as leading, no foundation in the case.

(Testimony of Clinton J. Hutchins.)

Mr. DAVIS.—Is that so? I think I can compare the two.

The COURT.—It is leading, Mr. Davis.

Mr. DAVIS.—Well, maybe it is, but you have to ask leading [70] questions sometimes.

Q. All right. Now, Mr. Hutchins, with reference to that particular—with reference to the surface of that particular bath where your feet was resting, that was porcelain?

A. Yes, sir; smooth glazed porcelain.

Q. And you have already testified that it was very slippery. A. Yes, sir.

Q. Yes; and have you been on a zinc surface under the same circumstances? A. No, sir.

Q. Now, Mr. Hutchins, in what direction did you fall? A. I fell directly out of the shower.

Q. Directly out of the shower, but your back was to the entrance of the shower?

Mr. WARREN.—Object to that as leading.

Mr. DAVIS.—Was your back to the entrance of the shower?

Mr. WARREN.—Same objection, your Honor.

Mr. DAVIS.—That's absurd, I submit it is perfectly proper.

The COURT.—It is leading, Mr. Davis.

Mr. DAVIS.—You have already testified—now, I have the right to put this, I submit, your Honor, that counsel has no right, there is no use in counsel being so captious.

Q. Mr. Hutchins, you have already testified that your—that you were facing the rear of the bath, with

(Testimony of Clinton J. Hutchins.)

your back to the entrance? A. Yes, sir.

Q. Yes; now I want to know in which direction you fell.

A. My feet flew out and I turned on my side,—

Q. Yes, and fell on your left side—

A. And I fell on my left side. [71]

Q. Sure, you fell on your left side. Now, that's like this, eh? (Illustrating.) A. Yes.

Q. Then the wall of this shower-bath was on the starboard or port side of the vessel?

A. You mean the back?

Q. Yes.

A. It was on the port side, toward the port side?

Q. Exactly.

A. And I fell to starboard.

Q. Where did you strike after you fell out?

A. I struck in the shower-bath which was—a similar shower-bath which was directly opposite.

Q. You struck in that? A. Yes, sir.

Q. I want to be particular about it. Before you fell did you reach out with both hands or one?

A. Before I fell?

Q. Yes.

A. I had my hands out feeling for the water, and, then I pulled my left foot over and just as I put my weight on both feet they flew out from under me.

Q. Did you reach with your arms?

A. With my right arm.

Q. To grab something.

A. Yes, as I started to fall.

Q. And there was nothing to grab?

(Testimony of Clinton J. Hutchins.)

A. Nothing that I could get hold of.

Q. All right. Now, Mr. Hutchins, and then you felt this man catching hold of you?

A. Yes. [72]

Q. Yes, after you had fallen down. A. Yes.

Q. And where did they take you, Mr. Hutchins?

A. They laid me on a kind of a stool where I first sat down and removed my slippers, and sat me down, and I leaned back against the partition there.

Q. Had you lost consciousness up to that time?

A. I didn't lose consciousness at all.

Q. And where did they take you after that?

A. I sat on the stool and he called the steward and I told him that I was injured and he sent for the ship's doctor and the doctor came in and they led me and supported me to my stateroom.

Q. Yes, and then did the doctor go with you?

A. He went with me, yes.

Q. He and the steward?

A. Yes, I think it was the steward.

Q. Remember the name of the steward?

A. No, I do not.

Q. Then after you got in your stateroom did the doctor make an examination of your injuries?

A. Yes, the doctor of the ship, Dr. Macadory.

Q. That's what I mean, did he make an examination of your injury?

A. He made an examination of my arm and the bruises, that is, my person as well. He examined me to see if there was any other injury.

Mr. WARREN.—What is that last answer?

(Testimony of Clinton J. Hutchins.)

A. He examined my arm and looked me over to see if there were any other injuries.

Mr. DAVIS.—Now, Mr. Warren, surely you can hear, you are closer to him than I am, and I don't want this learned [73] gentleman to interfere with the continuity of this examination.

Q. What is Doctor Macadory's name, do you know his other name? A. Dr. R. J. Macadory.

Q. Kindly state what medical or surgical aid he rendered you at that particular time.

Mr. WARREN.—I object to that question as calling for the conclusion of the witness.

Mr. DAVIS.—Nothing at all; I asked him to state.

Mr. WARREN.—The witness may state as far as he can what the doctor did, but that question calls for a conclusion.

The COURT.—It calls for such particular facts as may be given. I overrule the objection.

Mr. DAVIS.—Go ahead and answer the question.

A. They sat me down on the settee in the room, and I told them I thought my shoulder was broken, and he took my arm and moved it around and felt of my shoulder, and he said no, it is a bad sprain. He said he could feel the broken points of the cartilage. He explained that around the edge of the shoulder socket there was a cartilage that had undoubtedly broken away, and that it was simply a sprain, that he could feel the prickly points of this cartilage, and then they laid me in my berth and he examined my limbs but didn't find anything further, and he gave me a couple of pellets, I think it was.

(Testimony of Clinton J. Hutchins.)

Q. Anything else?

A. Nothing else,—no, he asked me if I wanted some brandy, and I said I didn't drink anything. They laid me in my berth and he left me.

Q. What time was that, Mr. Hutchins, what hour of the day? [74]

A. I went in my bath very close to half-past six, a very few minutes after; it wasn't over five or ten minutes.

Q. When did you see the doctor again?

A. I think I met him on the deck that day.

Q. Did he call at your stateroom again that day?

A. Not that day. The next morning he came in.

Q. The next morning, at what hour?

A. I think it was while I was getting dressed.

Q. Did he put any bandages on your arm or take any other steps to render you surgical aid at that time? A. He did nothing further.

Q. Yes; do you know whether or not there is a hospital on board of that vessel? A. I do not.

Q. I will ask you whether or not you were suffering any pain at the time, Mr. Hutchins.

A. It became excruciating shortly afterwards.

Q. How long afterwards?

A. Within fifteen or twenty minutes or a half hour. They turned my pillow around so that my left side would be on the outer side of the berth. The berths on the "Great Northern" are very narrow, and pushed me a little over on one side so that my shoulder would not touch the side, but it was extremely uncomfortable and painful, and after I had

(Testimony of Clinton J. Hutchins.)

been there a few minutes I told my wife that it would be impossible for me to stay there. I wanted to get up and go on deck.

Q. Yes.

A. So I did get up, and with her assistance I dressed and went on deck, carrying my arm. It seems as though I felt [75] the necessity of supporting it, it was so painful. I unbuttoned my vest and forced my hand in and carried my arm this way until in fact we got to Honolulu.

Q. This doctor told you it was simply a sprain, eh?

A. Yes, a bad sprain, he said it would be all right in a few days.

Q. But he never came back to you until the next morning?

Mr. WARREN.—I object to the question as already asked and answered.

The COURT.—That has been answered, Mr. Davis.

Mr. DAVIS.—What time did he come back the next morning?

A. I think it was about eight o'clock.

Q. About eight o'clock?

A. He came in and moved my arm around a little more and said there was no fracture, that it was a bad sprain, and went out.

Q. Yes, and he did nothing else at that time, and that was the next day?

A. He didn't do anything any more at any time.

Q. Yes, and did he call on you at any time during the voyage after that? A. No.

Q. Now, Mr. Hutchins, how many days—that was

(Testimony of Clinton J. Hutchins.)

on the 16th, that accident? A. 18th.

Q. On the 18th that happened, and when did you get into port?

A. We got in Friday morning, the 18th, at half-past six, that is, we got into Hilo early in the morning of the 20th, Sunday.

Q. You got in there on the 20th? A. Yes. [76]

Q. And did you go ashore at Hilo? A. Yes, sir.

Q. Did you see any doctors there? A. No.

Q. At any time after you were injured did the captain visit you? A. No, not at all.

Q. Did any of the nurses on board the boat, the stewardesses?

A. They never visited me at all.

Q. Now, Mr. Hutchins, just when did you get to Honolulu? A. On Monday morning.

Q. Monday morning, what date?

A. The 21st, yes, the 21st.

Q. On the 21st, at about what hour?

A. I think it was about ten o'clock in the morning.

Q. Did any of the ship's officers visit you except the doctor and the steward, as you described him, after you received your injuries? A. No.

Q. Now, after you went up on deck, state—do you recall any incident,—some of the depositions disclose there that you presided at a mock trial, some divorce trial *that had* on board, is that true?

A. Yes, sir.

Q. Yes; well, now, were you suffering pain at that time?

(Testimony of Clinton J. Hutchins.)

Mr. WARREN.—I object to the question as being leading.

Mr. DAVIS.—What was your condition at that time?

A. Oh, I was suffering very severely; yes. I consented to be the presiding officer at this divorce case previously to being injured.

Q. Tell the Court the circumstances surrounding your doing that with your arm in that condition. [77]

A. I had consented, I had been asked to preside at this mock trial and had consented to do so, and after I was injured my wife tried to prevent my doing so, but I told her that anything that would take my mind off of this would be a good thing for me, and I consented.

Mr. WARREN.—That is inadmissible, the conversation between himself and wife, and I move to strike it out.

The COURT.—He can't state that, that is stricken out.

Mr. DAVIS.—Why did you go and preside there?

Mr. WARREN.—I object to that. I think that calls for a conclusion of the witness.

Mr. DAVIS.—All right, state the facts and circumstances.

A. I consented to act in this capacity, and desired to do so particularly because I felt that anything of that kind would relieve the pain I was undergoing and take my mind off of it. They had a table screwed down to the deck in the room where this was held, a

(Testimony of Clinton J. Hutchins.)

kind of a social hall, and I sat behind that and I supported my arm in my vest, and the table had some kind of a projection under it which I would get hold of and get up this way whenever I was called upon to get up.

Q. State whether or not you were suffering any pain at that time. A. Oh, I certainly was.

Q. And were you suffering pain from that time on until the vessel arrived in port?

A. Yes, sir; I certainly was.

Q. Now, after you arrived in Hilo, did you—I mean in Honolulu did you see other medical attendance and aid? A. Yes, sir; immediately. [78]

Q. Yes. And who did you consult?

A. I consulted Dr. C. B. Wood.

Q. Dr. C. B. Wood. Did you go to his office?

A Yes, sir.

Q. And did he make an examination of you?

A. He did.

Q. And then what did you proceed to do with reference to surgical aid?

A. I stripped so that he could make a thorough examination, and he hardly took hold of my arm before he said, "You have got a badly broken arm," he said, "I think it is an impacted fracture."

Mr. WARREN.—That is not admissible, your Honor; the doctor can testify.

The COURT.—Yes, he can't tell what the doctor said; that is for the doctor to say.

Mr. DAVIS.—Sure he can; I think it is clearly admissible to say what the doctor said.

(Testimony of Clinton J. Hutchins.)

The COURT.—He cannot.

Mr. WARREN.—I move to strike the answer, your Honor.

The COURT.—In so far as the witness has related what the doctor said, the testimony is stricken out.

Mr. DAVIS.—But the rest of it goes in.

Q. Now, he made a thorough examination of you?

A. He did.

Q. Now, do you know as a matter of fact you had suffered a fracture of the left arm joint, do you know that?

Mr. WARREN.—Unless the witness can answer of his own knowledge.

Mr. DAVIS.—Now, Mr. Warren, you are not going to take charge of this Court or the witness or me, he is doing that, your [79] Honor, and it has reached a point where I ask your Honor to interfere. He has a right to make objections, but he is not going to control this case from me. Your Honor can.

The COURT.—Mr. Davis, you must not exhibit so much temper.

Mr. WARREN.—In order that there will be no mistake in my position, I object to the question unless it is to be answered from the witness' own knowledge.

The COURT.—I understood his objection to be addressed to me at the time.

Mr. DAVIS.—I thought he was addressing it to the witness.

The COURT.—Perhaps you did if you thought so, but at the same time he was addressing me as to

(Testimony of Clinton J. Hutchins.)

what the witness knows of his own knowledge. Mr. Hutchins, if you know of your own knowledge what your injury was you may state it, but you cannot state it *from you* learned in a conversation.

A. I didn't know what was the matter with me.

Mr. DAVIS.—You don't know except what you got from the doctor? A. Yes.

Q. That's all right; then what did he do, the doctor, what did he do next?

A. He directed me to go to Doctor Straub and have an X-ray photograph taken.

Q. And did you do it? A. I did.

Q. And did Straub make an examination?

A. Not an examination of my arm, but immediately after he had taken the flash he went into—he took the slide and went into the dark room and asked me to lie still and he would let me know the result.

[80]

Q. Yes? A. And when he returned he said—

Q. Never mind that, after he returned what did he do? A. After he returned he said—

Mr. WARREN.—I object to that.

Mr. DAVIS.—Don't state what he said; state what he done.

A. Well, he helped me to dress and told me to go to Dr. Wood's office and have my arm dressed. I don't know how else I can state it.

Q. Yes, to go to Dr. Wood's office. What was done to your arm after that?

A. Dr. Wood bound my arm in about this position.

(Testimony of Clinton J. Hutchins.)

Q. How did he bind it?

A. With a regular bandage.

Q. How? A. Stretched around me.

Q. Just describe to the Court fully.

A. With twenty-eight yards of bandage put on every second day for—I think it was four weeks.

Q. How long a period?

A. For about four weeks, binding my arm in a certain position each time.

Q. How many times did you have occasion to visit Dr. Wood and Dr. Straub?

A. I saw Dr. Straub but once, and Dr. Wood fourteen or fifteen times.

Q. Fourteen or fifteen times?

A. Or more, fifteen or twenty times.

Q. How long was your arm—how long before he took the bandages off? A. Four weeks.

Q. Did Dr. Straub and Dr. Wood render you any account, any [81] bill for their services?

A. Both of them did; yes.

Q. How much?

A. Why, I am not quite sure. I think that Dr. Wood's bill was $110.00.

Q. And how much was Straub's?

A. I am not quite certain of that, but I think $15.00.

Q. Did you pay them both? A. I did.

Q. Did Dr. Wood give you any medicine outside of the bandages? A. No.

Q. Were you able to return—had you arranged to

(Testimony of Clinton J. Hutchins.)

go back to the coast at any certain date when you came here?

A. I had return tickets on the "Great Northern."

Q. When did she return?

A. She returned on the 21st.

Q. Were you able to go on that return of the "Great Northern"? A. I was not.

Q. Why?

A. Why, because I had to return to Hilo where I had to attend to the business which I should have done as I came down, and which I was not able to attend to on account of my condition.

Q. Well, now, from the time that you arrived here in Honolulu—as soon as you arrived here you went right straight to the doctor of your own volition, did you? A. I did.

Q. Did the ship's doctor suggest that you go and see another surgeon at any time?

A. Not the ship's doctor.

Q. That's what I am saying, or did the captain of the vessel? [82] A. He did not.

Q. No, or did any of the officers? A. None.

Q. Now, do you know whether or not there was any doctors on board travelling as passengers?

Mr. WARREN.—I object to that as being incompetent, immaterial and irrelevant.

Mr. DAVIS.—I submit it is perfectly competent and material. Here is a passenger ship and here is the ship's doctor here, and in the event of any accident at sea or anything, if there are any doctors on board that ship he has a perfect right to have him.

(Testimony of Clinton J. Hutchins.)

Mr. WARREN.—I withdraw the objection.

Mr. DAVIS.—Do you know if there were any other medical men on board, surgeons?

A. There was a surgeon from some place in Massachusetts; I passed along the deck one day, one evening—

Mr. DAVIS.—I don't think you have any right to state the conversation you had with him. He saw the condition of your arm. I will ask the question anyway.

Q. What did he say about your arm?

Mr. WARREN.—I object to the question.

The COURT.—Objection sustained. That is hearsay.

Mr. DAVIS.—Did he make any statement or give you any advice?

A. He did.

Q. He made no examination though? A. No.

Q. Let him object to this and rule it out. Did you tell *you* that instead of a bruise you had a fracture?

Mr. WARREN.—Same objection, your Honor.

The COURT.—I sustain it.

Mr. DAVIS.—I offer it anyway, that is what the doctor said. [83]

Mr. WARREN.—I move to have the comment of counsel stricken.

The COURT.—Of course, that is not in evidence.

Mr. WARREN.—That is what the doctor said, he said.

Mr. DAVIS.—I am offering it.

The COURT.—The Court holds that the state-

(Testimony of Clinton J. Hutchins.)

ment of the doctor was hearsay.

Mr. DAVIS.—That ought to go in the evidence.

Mr. WARREN.—Oh, you want the Court to hear it, is that the idea?

Mr. DAVIS.—No, I want you to hear it for your information to show up this valuable doctor you had on board there to fulfill the terms of your contract.

The COURT.—Gentlemen, we haven't time for this, and I have already ruled now.

Mr. DAVIS.—I beg the Court's pardon.

Q. Now, Mr. Hutchins, you remained in Honolulu how long?

A. The 21st of February the Northern Pacific ship went back to Hilo and I went back on her.

Q. The 21st of February, and when did you get back to San Francisco? A. April 5th.

Q. April 5th. Now, how long before you were relieved of the pain, can you give us the date as near as you can, if you have been relieved yet?

A. The continuous pain— Oh, I couldn't say, Mr. Davis, it was quite a long period.

Q. Three or four months?

A. The continuous pain?

Q. Yes. A. No, not that long.

Q. How long then?

A. Well, it was, perhaps, four or five weeks. [84]

Q. Do you suffer any pain in there now at times?

A. At times, yes.

Q. Mr. Hutchins, did you ever go on board of the

(Testimony of Clinton J. Hutchins.)

"Great Northern" and make an examination of that bath-room? A. I did.

Q. When?

A. After she came back here on her trip afterwards.

Q. What month was it?

A. Some time about the middle part of March.

Q. About the middle of March? A. Yes, sir.

Q. And when you went aboard the "Great Northern," did you go to this same bath-room?

A. I did.

Q. Anybody with you? A. No.

Q. Wasn't there some steward to go with you?

A. Not at that time.

Q. Well, did you see the bath?

A. I went in, yes, and looked at it.

Q. Now, I want to ask you with reference to the back of the place, was there any handles or projections there? A. None.

Q. You are sure of that? A. Positive of it.

Q. And it was the same shower-bath that you had fallen in? A. It was.

Q. And was injured in?

A. Yes. I went again on the day that she came in, and on the trip again after that.

Q. Anybody with you at that time?

A. Yes, one of the stewards who had been my table steward when I made the first trip. [85]

Q. What is his name?

A. Lefebre, a French boy.

Q. Any hand-railing at the back or other appara-

(Testimony of Clinton J. Hutchins.)

tus when you went that time?

A. There was none.

Q. Did you go aboard after that?

A. No, that was the last time.

Q. What date was that?

A. It was, I think, the 31st day of March, the day she got in here from San Francisco, on the second trip after I was injured.

Q. And that was the same bath?

A. Same bath.

Q. The same shower-bath?

A. The same one, the same condition.

Q. In which you were injured? A. Yes.

Q. No hand-railing of any kind?

A. None whatever.

Q. Mrs. Hutchins was with you on that trip?

A. She was.

Q. And she returned to San Francisco when you did? A. And also went to Hilo with me.

Q. Yes? A. Yes, sir.

Q. During your pain and illness, you say you received no attention from any of the nurses or stewards on board connected with the vessel?

Mr. WARREN.—I object to the question as asked and answered, your Honor.

The COURT.—I think he has already stated that.

Mr. DAVIS.—Did your wife attend to you during your illness on that trip? A. She did.

Q. Your ticket was taken up, was it, during your illness on [86] that trip, by somebody, some officer of the trip? A. The return portion?

(Testimony of Clinton J. Hutchins.)

Q. Yes.

A. Yes, I turned it into Waldron's and received the amount I had—the difference, that is, what the return fare amounted to.

Q. Yes, I know, but your ticket for your passage down from San Francisco to Honolulu, that ticket was taken up by anybody?

A. It was taken up by—

Q. By whom?

A. By some officer on board the steamer.

Q. The purser?

A. Either the purser or his assistant.

Q. Both tickets, for you and your wife on that voyage? A. Yes.

Q. How much money did you pay for the passage, Mr. Hutchins?

Mr. WARREN.—I object, incompetent, irrelevant and immaterial.

Mr. DAVIS.—That goes to the validity of the marine contract. I submit it without further argument. It is absurd. He has a perfect right to state how much he paid for the passage.

The COURT.—Overruled.

Mr. DAVIS.—How much did you pay, Mr. Hutchins,—incompetent and irrelevant, like your assumption of risk,—how much did you pay, Mr. Hutchins?

A. I think I paid $80.00 apiece—that is double, less 10%, that would be $134.00 each. $268.00 I think was my check.

Q. And you paid that to the agents of the com-

(Testimony of Clinton J. Hutchins.)

pany in San Francisco before you got on board?

[87] A. I did.

Mr. DAVIS.—It would be a nice thing if this record went up and I hadn't proved the amount paid in for fares.

The COURT.—You need not comment, Mr. Davis.

Mr. DAVIS.—Are there any other events or circumstances—I beg your Honor's pardon—any other events and circumstances connected with this matter that you would like to state, Mr. Hutchins, that I have not asked you about?

Mr. WARREN.—I don't think that is quite proper, your Honor, and I object to it.

Mr. DAVIS.—I think he has a perfect right to say.

The COURT.—That is a question asked in a deposition, but if you wish you can consult with him so as to give counsel an opportunity to object.

Mr. DAVIS.—Is there anything else, Mr. Hutchins?

Mr. WARREN.—Same objection.

Mr. DAVIS.—It would save a lot of time, your Honor.

The COURT.—You can consult with him.

Mr. WARREN.—I object to that, your Honor, to counsel addressing the witness on the stand.

Mr. DAVIS.—I want to know if there is anything else, that is all, and he is going to tell me. All right, we will take him off the stand, withdraw him for a moment. Puts me in mind of a box I had a Christmas time when a little boy, with something inside that jumps up and down and in and out.

(Testimony of Clinton J. Hutchins.)

Mr. WARREN.—I wouldn't like to be seen doing that myself.

Mr. DAVIS.—Now, Mr. Hutchins, did you have any conversation with the chief engineer of this steamship about your accident? A. I did. [88]

Q. When was it?

A. It was on the day of the accident.

Q. On board the steamship? A. Yes.

Q. What did he say to you?

A. I was at his table and—

Mr. WARREN.—I object to that as hearsay, and incompetent testimony, it has got to be a general line of conversation occurring in the line of duty of this engineer as a witness. Conversations between persons merely because they happen to be employees of the company do not make it admissible.

The COURT.—Conversations in order to be admissible, Mr. Davis, must have relation to their particular duties.

Mr. DAVIS.—Who was the engineer?

A. The chief engineer, Mr. Morris.

Q. Did he have supreme control of the bath-tubs?

A. That I don't know.

Q. Mr. Hutchins, how many times had you been in that particular bath-room before you entered it that morning, the 18th?

A. Never been there before.

Q. That was the first time?

A. First time.

Q. State with reference to the surface of that

(Testimony of Clinton J. Hutchins.)

basin as to whether or not it was flat or curved or how.

A. It was slightly concaved towards the center.

Q. Have you any children, Mr. Hutchins?

A. I have one daughter, one child.

Q. Is she living at home with you now?

A. In Berkeley.

Q. She is not married yet? A. No.

Q. Living at home? A. Yes.

Mr. DAVIS.—That is all. [89]

Cross-examination of CLINTON J. HUTCHINS.

Mr. WARREN.—Were you a resident of Berkeley, Mr. Hutchins, at the time this accident occurred?

A. Yes, sir.

Q. And when this libel was filed? A. Yes.

Q. And still are?

A. I have a residence there. Honolulu is really my home. I am there on account of the education of my daughter.

Q. How is that?

A. I am there for the education of my daughter, so that my wife can be with her. She is at the University of California.

Q. Where is your domicile?

A. At the present time?

Q. Yes.

A. You mean—well, I am living at the Young Hotel. I have this home in Berkeley.

Q. Your home is Berkeley, and your family is there? A. My family is in Berkeley.

Q. How long have you been living there?

(Testimony of Clinton J. Hutchins.)

A. Since July, 1911, the beginning of the University term.

Q. You left Honolulu at that time, left these Islands? A. In 1909; March, 1909.

Q. And from then on have resided in San Francisco? A. San Francisco and Berkeley.

Q. Just what is the nature of your brokerage business, what particular kind?

A. Especially handling molasses. [90]

Q. Will you specify a little more particularly?

A. Why, particularly handling molasses as I stated, molasses, brokerage in molasses.

Q. Buying and selling molasses? A. Yes.

Q. And how long have you been in that particular business?

A. Something over a year, a year and a half.

Q. Beginning when? A. October, 1915.

Q. Any other brokerage business besides that?

A. Why, I have handled some land brokerage but very slight. My principal activities have been along the line of handling molasses in a brokerage way.

Q. Practically exclusively from October of 1915?

A. Practically so, yes.

Q. And you still are? A. Still am.

Q. Engaged in that business? A. Yes.

Q. And this other business you have mentioned, what is the name of that concern?

A. The California Unit Farms Company.

Q. Is that a partnership or a corporation?

A. A corporation.

Q. Where is its place of business?

(Testimony of Clinton J. Hutchins.)

A. San Francisco.

Q. Where are its properties situated?

A. In the city of Oakland, county of San Joaquin and county of Glenn, California.

Q. How long have you been in that business?

A. Two years and a half or three years.

Q. What is your own connection with that concern? A. I am the president of it.

Q. To what extent are you the owner of stock in that corporation, Mr. Hutchins? **[91]**

A. About 80 to 85% I think it is, of the stock, I am not certain.

Q. You are the manager of that business?

A. Yes, sir.

Q. What is the capital stock?

A. The issued capital is $265,000.00, I think it is $264,000.00.

Q. And what is the extent of its holdings, real estate?

A. We have 640 acres in Glenn county, 80 acres in San Joaquin county, and a lot in Oakland, on Broadway.

Q. With the exception of the lot in Oakland that is agricultural or farming land?

Mr. DAVIS.—I object, your Honor; he can't go in to find out all about this man's income, he can't pry into anybody's private affairs beyond a certain limit. This is not a fishing expedition to find out and turn Mr. Hutchins' private affairs inside out about his income.

(Testimony of Clinton J. Hutchins.)

The COURT.—I don't see what that has to do with it, Mr. Warren.

Mr. WARREN.—I am going into just that point, your Honor. I will put the direct question.

Q. What have you received from this corporation in the way of income and returns?

A. My salary is $5,000 a year.

Q. And have you received any income from that corporation in the way of dividends?

A. Not yet; no.

Q. Has your salary as manager of that corporation been interrupted by reason of your trip to Honolulu in 1916? A. No. [92]

Q. You lost nothing from your salary?

A. Nothing at all.

Q. When you went to San Francisco in 1909, in what business were you then engaged?

A. Insurance.

Q. And from then on up to October, 1909?

A. Up to October, 1909?

Q. October, 1915.

A. About 1911, October, 1911, I retired from business entirely.

Q. And when did you next engage in business?

A. Along in 1913.

Q. In the business of buying and selling molasses; and what are the various sources of supply, where?

A. The beet sugar companies of California and the Hawaiian Islands.

Q. What was the object of your trip to Honolulu?

(Testimony of Clinton J. Hutchins.)

A. To arrange to store and purchase their molasses.

Q. From the various sugar plantations in these islands? A. Yes.

Q. You had purchased a round trip ticket on the "Great Northern"? A. Yes.

Q. Had your plan—was it your plan to return by the same vessel on the same round trip? A. Yes.

Q. That would have given you how many days in Honolulu? A. Five.

Q. And one day at Hilo?

A. Yes, that was coming. Two days in Hilo, was *was* coming here on the "Great Northern" and going back on the "Northern Pacific." The "Northern Pacific"—the round trip was not on the "Northern Pacific," by the way; it was to come here [93] on the "Great Northern" and to go back on the "Northern Pacific."

Q. On the "Northern Pacific"?

A. Yes, the two boats came here at the same time, and I was to transfer from the "Great Northern" to the "Northern Pacific" after two days in Hilo.

Q. That would give you five days in Honolulu?

A. Five days in Honolulu and two days in Hilo.

Q. You were anxious to get back to San Francisco? A. Very.

Q. How was your time occupied in Honolulu, during, say, these five days?

A. Well, I was principally looking after my—going to the doctor's office. I went to the doctor's office every other day at eleven o'clock and had my

(Testimony of Clinton J. Hutchins.)

arm bound, and the balance of the time I was about the town.

Q. You say that you went back to Hilo to do something there that you had been unable to do on the stop over with the "Great Northern"? A. Yes.

Q. When did you go back to Hilo?

A. I went back on the "Northern Pacific" on the 21st.

Q. On the 21st of February? A. Yes.

Q. How long did you remain in Hilo?

A. We got there Sunday morning and left there Tuesday noon on the "Kinau,"—I mean on the "Maunakea," and came back here.

Q. You arrived back here on what day?

A. On Sunday, I think it was Sunday,—or left there Monday or Tuesday, I don't know which. The regular trip of the [94] "Maunakea," whatever it was.

Q. The first return of the "Maunakea" to Honolulu after the "Northern Pacific" landed you at Hilo? A. That is it.

Q. Roughly, can you say how many days you spent in Hilo? A. I think it was two.

Q. Not more than that?

A. Not more; I am not certain whether it was one or two, or a day and a half, something like that.

Q. At Hilo? A. At Hilo.

Q. Where did you go and what did you do?

A. Why, I arranged for the putting in of foundations for storage tanks for the holding of molasses and employed men to take charge of it and so forth,

(Testimony of Clinton J. Hutchins.)

and arranged for the contracts for the levelling of the tank site.

Q. That tank site was for a storage tank, you say, for molasses? A. Yes, two storage tanks.

Q. Which you were to obtain from the plantations on the railroad? A. Yes.

Q. At that time had you contracts for molasses from the plantations, any of the plantations there?

A. Yes, I had contracts for eight of them, I believe.

Q. For what plantations?

A. Olaa and Waiakea.

Mr. DAVIS.—Is it necessary to go into the details of that? I object to it as not proper cross-examination, and not tending to prove or disprove any of the issues in this case.

The COURT.—I can't see the relevancy of this.

[95]

Mr. WARREN.—If your Honor please, this libel alleges that the libellant was compelled to remain in Honolulu unable to return to the coast, was anxious to get back there and was being kept away from his business at which he was earning from $15,000 to $20,000 a year, and I am going into the question of what this business here was, what he was here for and how long it took him to prosecute it—

Mr. DAVIS.—Why does he want to know the names of the plantations? He has no right to know that.

The COURT.—The plaintiff has chosen to ask damages by reason of alleged interference with his

(Testimony of Clinton J. Hutchins.)

business. In case a vessel is libelled for damages for breaches of marine contracts, one of the elements alleged in the libel is that his injury interfered with his business here and back at San Francisco, and therefore it becomes proper to indicate now just what was his business here.

Mr. DAVIS.—I withdraw the objection.

The COURT.—I think it is legitimate testimony in view of the explanation made by Mr. Warren.

A. Olaa, Waiakea, Pepeekeo, Honomu, Laupahoehoe, Kaiwiki, Kukaiau and the Honokaa Mill.

Mr. WARREN.—When were those contracts negotiated, Mr. Hutchins?

A. Before I came to the islands.

Q. For all of those you have named you had closed the contracts before coming?

A. Well, they had not been entirely closed, I think, but they were agreed upon.

Q. What ones had been closed?

A. I don't think the Olaa contract was closed until after I got here, just as I got here. [96]

Q. When was it closed?

A. I guess it had been closed. It was agreed upon, but whether the actual signatures had been affixed I am not certain. It was a little different contract from the others. I made arrangements by cable for the Olaa contract, whether it was actually signed and delivered before that I am not certain, Mr. Warren.

Q. Are you able to state with certainty what contracts were entirely closed before you came here?

A. Contracts for the Papaloa, Laupahoehoe, Kai-

(Testimony of Clinton J. Hutchins.)

wiki, Kukaiau, Honokaa Mill and Waiakea.

Q. Those were all Davies & Company's plantations? A. Davies and Company's plantations.

Q. When was the contract for Olaa closed?

A. Well, I said that I am not quite certain. That was agreed upon by cable before I got here, and I think also with the Pepeekeo and Honomu.

Q. In connection with the Olaa plantation, did you have communications with the agents of that plantation here in Honolulu after your arrival?

A. It seems to me that there was one clause that was taken up after I got here, but I am not certain.

Q. Was that taken up by you with the agents here?

A. Yes.

Q. When?

A. I think immediately after,—well, I think right after I came back from Hilo, I am not certain. I saw Mr. Eckart in Hilo, and I took it up with Mr. Mackenzie I think immediately after I got back, but I am not sure.

Q. How about the Pacific Sugar Mill and Honokaa? [97]

A. That was closed after I returned from the coast. I returned to the coast again on the 5th of April and returned on the 15th of May.

Q. As you came back to the islands? A. Yes.

Q. On the 15th of May? A. Yes.

Q. While here on a trip from the "Great Northern" and before returning on April 5th, did you carry on negotiations with the agents of these plantations here in Honolulu?

(Testimony of Clinton J. Hutchins.)

Mr. DAVIS.—By and by he will be asking him if he was in the Judd building, on the top of it. Your Honor can limit it or we will be sitting here all day. He is going into all kinds of details—

The COURT.—When you get through with your objection, Mr. Davis, I will rule on it. Of course, there are certain secret matters about his business which cannot be inquired into, but in view of the allegation that this injury had interfered with his attention to his business he is entitled to go into the details of that matter and inquire whether it did or did not, by asking what he did and have him explain everything that he did here, because one of the elements alleged is that this injury interfered with his attention to his business.

Mr. DAVIS.—What was the last question, Mr. Reporter?

(Last question read.)

The COURT.—The allegations are that his injury interfered with his business and he has the right to cross-examine.

Mr. DAVIS.—Yes, but not to go into every minute detail and trace it step by step.

The COURT.—He cannot make him disclose his confidential business relations with these people but he has the right [98] to find out how he occupied his entire time—

Mr. DAVIS.—All right, I will withdraw the objection to save time. Mr. Hutchins has nothing to hide, he don't care.

The COURT.—Proceed with the examination.

(Testimony of Clinton J. Hutchins.)

Mr. WARREN.—Read the last question please, Mr. Reporter.

(Last question read as follows: While here on the trip from the "Great Northern" and before returning on April 5th, did you carry on negotiations with the agents of these plantations here in Honolulu?)

A. I think I did, yes, with Schaeffer & Company.

Q. When? A. Just before I left.

Q. Just before you went up?

A. Yes, around the first of April, around there some time, as I remember, that is, for the Honokaa and the Pacific Sugar Mill.

Q. When did you open these negotiations?

A. That I don't know, Mr. Warren, I haven't much idea when I *I* did open them up. I don't think I opened them up before April 1st, just before I left, I think I got a cable in regard to molasses that sent me in there.

Q. Then, to the best of your recollection, Mr. Hutchins, the negotiations by you for molasses from Honokaa and the Pacific Sugar Mill were not opened before you came here? A. I don't think they were.

Q. Now, what other plantations or agents did you approach here in Honolulu on that trip, to buy molasses?

A. I think I wrote a letter to Alexander & Baldwin, and I think that is all, but I am not certain, Mr. Warren, between the time I was here at that time and my next trip exactly [99] what my movements were regarding molasses. I came right back and I

(Testimony of Clinton J. Hutchins.)

was here three months and a half. When I got back I negotiated with practically all the houses at that time when I returned, but I don't remember when the negotiations were started, whether it was before I left the coast or while I was here. I remember writing a letter to Alexander & Baldwin regarding molasses on Kauai.

Q. When were you on Kauai?

A. No, regarding molasses from Kauai from other plantations on Kauai.

Q. What about their Maui plantations?

A. I don't think I had any negotiations at all for Maui.

Q. Any Oahu plantations negotiated for by you during that stay here then?

A. Not that I remember, I think not.

Q. When you went to Hilo, as I understand it, you say on the 21st? A. The 21st, yes.

Q. Of February? A. Of February.

Q. By the? A. "Northern Pacific."

Q. The "North Pacific"?

A. The steamship "Northern Pacific."

Mr. DAVIS.—That's a sister ship of the "Great Northern."

Mr. WARREN.—Yes. Did I understand you to say a while ago that you were expecting to make your return to the coast on the "Northern Pacific"?

A. Yes.

Q. When she left here, Honolulu, on the 21st?

A. Yes.

Q. On the 21st of February for Hilo, and how

(Testimony of Clinton J. Hutchins.)

many days did [100] you have here in Honolulu between times?

A. Five between the time I went to Hilo and the time I got here. I got here Monday and left Saturday.

Q. The accident occurred on the 18th of February?

A. The accident occurred on Friday, the 18th. We arrived here on Monday, the 21st and I sailed for Hilo on Saturday the 26th on the "Northern Pacific."

Q. I understood you to say that you sailed for Hilo on the 21st.

A. The 26th. Dr. Wood bound my arm so that it would remain so until I got back, and he bound it directly on my return.

Q. And on that trip you were contemplating stopping off at Hilo attending to the matter of the tank site and then coming on to Honolulu?

A. Yes, sir.

Q. Then returning by the "Northern Pacific" stopping at Hilo again and going home? A. Yes.

Q. How long a stop did the "Great Northern" make at Hilo coming down? A. One day.

Q. And the "Northern Pacific" going back?

A. One day.

Q. One day. Between the time that you arrived in Honolulu on the "Great Northern" and left for Hilo on the "Northern Pacific," what did you do in Honolulu?

(Testimony of Clinton J. Hutchins.)

A. Well, I don't remember doing much of anything, Mr. Warren.

Q. Did you undertake to do any molasses business?

A. That I couldn't say. I don't recollect that I did. The carnival was on, and I don't think I did any business at **[101]** all, don't remember that I took up any business at all in that week; I am not sure about that.

Q. Were you able to be about? A. Oh, yes.

Q. And then would you say that the carnival had more to do with your being idle in that interval than your arm?

A. Oh, my arm didn't interfere particularly with my getting around. I could talk with anybody with my arm in a sling or bound up just as well as with it unbound. It was the delay here, delayed me very much for a time, and in San Francisco I had some very important contracts on that were entirely shot to pieces by my being delayed here.

Q. Then as far as your arm was concerned you were able to have done business here?

A. Oh, yes; except that I didn't feel very much like doing business, you understand. There was no particular reason why I should not except that my feeling was bad, I didn't feel well, I suffered a good deal of pain.

Q. You had fully contemplated concluding your Honolulu business in those five days? A. Yes.

Q. Just what was the business you intended to finish up in those five days?

(Testimony of Clinton J. Hutchins.)

A. The principal business was looking up figures on pumps and piping and the building of these foundations, et cetera, of these tanks. We thought we would have to have them done at the Honolulu Iron Works, and as soon as I took it up with them they said the Hilo Iron Works would take care of it. I also took it up with Catton, Neill & Company, I think immediately I got here, the day after we got in or two days after, on Wednesday I think it was, I took it up [102] with Catton, Neill & Company. I also had an interview with a man here that I wanted to employ to go to Hilo and take charge of these large tanks we were going to put up.

Q. So that your business had more to do with the arrangements for construction and management of the tanks than with the negotiations of molasses contracts? A. Oh, yes.

Q. At that time? A. Very much more so.

Q. You have had a number of molasses contracts in suspense before you left San Francisco?

A. No, they were all closed except possibly Olaa.

Mr. DAVIS.—Does your Honor think he ought to go on with this cross-examination; he has been a half an hour on molasses contracts.

A. Let him take another hour.

Mr. DAVIS.—I submit it is exhausted.

The COURT.—I don't think so. Go ahead.

Mr. WARREN.—Your later trip in May was for what purpose, Mr. Hutchins?

A. For the purpose of purchasing molasses.

Q. During your stay in Honolulu on the first trip,

(Testimony of Clinton J. Hutchins.)

the five days, did you make arrangements for the construction of the tanks?

A. No, the construction was on the coast.

Q. Yes.

A. And as soon as I could get the facts and data I cabled to the coast fully about it and arrangements were made there, and when I went to Hilo I arranged with the Hilo Iron Works and with a contractor to go ahead and do the work. **[103]**

Q. And did you get that matter concluded before you went to Hilo, as far as that work in Honolulu was concerned? A. Not entirely, no—

Q. You had figured before that by going through to Hilo on the "Great Northern," one day would have been sufficient for that business?

A. A day going there on the "Great Northern" and a day going back on the "Northern Pacific" would have been amply sufficient if I had been in shape to take care of it going down.

Q. Did you take up any other kind of business in Honolulu when here on that trip than you have mentioned?

A. I don't think so except incidentally.

Q. Did you endeavor to do anything with the introduction of barrels as containers for plantation products instead of sugar bags?

A. No, I did not make any effort toward it.

Q. You broached that matter to the sugar people, did you? A. Yes.

Q. Anything else? A. Not that I remember.

Q. Did you have with you some samples of paper

(Testimony of Clinton J. Hutchins.)

made from cane bagasse?

A. No,—yes, I did have some. I had some small packages; yes, I did.

Q. What did you do with those?

Mr. DAVIS.—Is that material or competent what he done with them? I submit it is improper cross-examination.

The COURT.—I think it is improper, Mr. Warren, what he did with them. I think it is immaterial. Sustain the objection.

Mr. WARREN.—In your business at San Francisco, Mr. Hutchins, [104] did that extend to the general promotion and endeavor to market or utilize commercially other products of sugar than molasses?

A. No, I don't think it did. What products do you refer to?

Q. Any products of sugar-cane other than molasses. A. My activities in San Francisco?

Q. Yes.

A. No, I don't think so. If you will be a little more definite I can probably answer you more clearly.

Q. I will specify the utilization of sugar *can bagasse* for the manufacture of paper and paper pulp.

A. I never had anything to do with it at all.

Q. At San Francisco? A. Never.

Q. Did you endeavor to do any business with that article in Honolulu?

A. No, friends of mine had this—

Mr. DAVIS.—Never mind the friends. He asked

(Testimony of Clinton J. Hutchins.)

you a question and you answered it. What is the use of going on about the friends?

Mr. WARREN.—When you left for Hilo, you say you had not quite concluded the arrangements here of getting data about the tanks. How much longer time did you require?

A. Well, I possibly could have finished up by a strenuous effort, but I knew I could not safely travel back to the coast, and I wanted to be with Dr. Wood while I was here, my physician. I didn't feel that I was in any position to travel.

Q. Without strenuous effort what further time would you have reasonably *have* required to finish that particular work?

A. Well, that is entirely a case that I can't say, Mr. Warren, [105] because I don't remember now what proportion I had to do. Whatever it was, when I knew what the condition of my arm was I knew I would be detained here, I couldn't very well go back to the coast,—I don't remember the date that I sent the final cable off to the coast advising the purchase of pumps and so forth, on the coast.

Q. At the outside how many more days do you think it would have taken if you had put your time to it?

A. If I had devoted my whole time to that and nothing else?

Q. Yes.

A. I suppose to do it thoroughly it would have taken me ten days.

(Testimony of Clinton J. Hutchins.)

Q. That was the business that you expected to do in five days? A. Yes.

Q. And when did you find or consider it would have taken you ten days?

A. Well, I have a certain line of action I laid out for myself which would have taken me five days, but when I found my condition I changed my tactics so that I could do it more thoroughly. I could have been satisfied with the information I had and gone ahead—

Q. You could have? A. Yes.

Q. But you decided for yourself that you would have to remain in Honolulu on account of your arm?

A. Yes, Doctor Wood advised me to.

Q. Yo returned from Hilo on February 28th, did you say?

A. Well, whenever—when does the—I think we left there the 28th and got back here on the—when does the "Maunakea" get in? On Tuesday or Wednesday I got back from Hilo.

Q. Leaves here Wednesday and Saturdays, but gets here Tuesday [106] morning.

A. That's it, we left there Monday afternoon. I was in Hilo from Sunday morning until Monday afternoon finishing up what there was to be done.

Q. You say the carnival was on when you were here then? A. No, it was the previous week.

Q. What is that?

A. It was on between the 21st and 26th.

Q. On arriving at Honolulu did you have any time set for your return? A. Yes, the 26th.

(Testimony of Clinton J. Hutchins.)

Q. And finding that you could not return by that date did you book for any other vessel?

A. I don't think so. The date of my departure was very uncertain until I knew what the result of my arm, my injury was going to be.

Q. You had the bandages on for four weeks?

A. Four weeks, yes.

Q. How frequently did you go to Doctor Wood for attention during those four weeks?

A. Every other day.

Q. Except the time you were at Hilo?

A. He dressed my arm just as I left, an hour before I left, and I went to him immediately after I got back.

Q. Did you make any other island trips while here? A. None, no.

Q. After the bandages were removed how long did you continue to go to the doctor?

A. I went to him until I left, I don't know how often. The bandages came off about the 18th or 20th of March and I [107] left on the 5th of April. I think I saw him three or four times during that time.

Q. Now, what prevented your leaving for the coast about the middle of March?

A. The bandages were not off.

Q. What prevented your leaving when the bandages had been taken off?

A. Nothing, except I booked with the "Maunakea," I think—I mean the "Matsonia" and went on the first steamer after I was in position to travel. I

(Testimony of Clinton J. Hutchins.)

know I didn't delay any longer than I could help. I got out at the first instance.

Q. Between the time that the bandages were taken off and the time you left you were still conducting negotiations with Honokaa and Pacific Sugar Mill?

A. I don't think so.

Q. Sure of that?

A. I don't think so. Then until April, just when I left for the coast, I got a cable and went in and saw them, I think it was along about the 1st of April, as I remember, the first time I ever saw them about it.

Q. Did you take it up with them other than personally prior to that?

A. That I could not say, Mr. Warren. I don't remember whether I did or not. I don't think so. As I remember, I had no idea of Honokaa molasses until this cable came, that is my impression as I remember now. There was a great deal of talk about that Honokaa molasses, how it was going to be handled, and so forth. I am not sure about that, it seems to me I did have some negotiations with them, too. I think [108] I did; I think we all drove down to look at a site, a possible site for a tank, but I am not sure of what that was, what date that was, but I think just before I left for the coast, I am not certain.

Q. You say that was after you got a cable?

A. I think so, I think so, yes, and I figured that the molasses would have to go to Honolulu to get it out.

Mr. DAVIS.—You are still on the molasses, Mr. Warren?

Mr. WARREN.—Yes, it's sticky stuff.

(Testimony of Clinton J. Hutchins.)

Q. In the matter of your passage ticket, on surrendering to the company the return coupon you had, you had a refund made for that?

A. Yes. The refund was the difference between the cost of a first-class ticket and what I had paid.

Q. The difference between a single and round trip?

A. Yes.

Q. In making the surrender of that ticket did you state any reason to the company for it?

A. That I don't remember that I did; I could not tell you whether I did or not.

Q. Can't you recall?

A. I don't know. I went in and turned in the tickets and got the money. I went in and turned in the tickets and got the cash, and bought a ticket on the "Northern Pacific," I think I told them I couldn't go, but I don't remember what took place; I remember going in, that's about all. I remember getting the money.

Q. You have no recollection of making any explanation about it?

A. I don't think I made any. [109]

Q. On what deck was this shower-room, Mr. Hutchins?

A. C deck; the same deck that my room was on.

Q. Prior to going into the shower-room where this accident occurred, did you take any shower on the trip? A. Never had; no.

Q. When you went into the shower-room, meaning now the room in which the shower compartments were, was the bath steward there? A. Yes.

(Testimony of Clinton J. Hutchins.)

Q. And did he assist in any way in the matter of turning on the water?

A. He turned the water on; the water was running.

Q. And was standing how near to you when he did that?

A. Well, I sat down and he went and turned the water on, and went out.

Q. So that he had left the room by the time you approached the shower compartment—

A. Yes, he was not there.

Q. —and the water was already running?

A. Yes.

Q. You put your hands or arms in to test the temperature of the water before stepping in?

A. Yes.

Q. Did you attempt to manipulate the faucet in any way to change the temperature of the water?

A. I did not.

Q. Had you gotten into the water falling from the shower before you slipped?

A. Just in it, just going under it. The water was splashing on to me, just as I got in, I got almost under it, part [110] way under it, at least, when my feet flew out. I wasn't wholly under the water at the time.

Q. And as far as your head was concerned, that was on the outside of the falling water?

A. Yes, it was not in the water.

Q. What volume of water was coming through—a pretty good flow? A. Yes, a good stream.

Q. And diffused by the spray pretty well?

(Testimony of Clinton J. Hutchins.)

A. Yes, that is, it was coming straight down; it was not shooting out.

Q. But in a fine spray?

A. No, heavy streams.

Q. Heavy streams, and was it cold or warm?

A. Cold.

Q. No steam or anything coming from the shower?

A. No, it was cold water, that is, it wasn't heated water at all.

Q. On what foot was your weight resting more than the other, if either, when you slipped?

A. If heavier on any it was on the right.

Q. More on the right?

A. More on the right than on the left. I pulled my left, it was over, and just as I got it down they flew from under me.

Q. You had not really then set your weight back on the left foot before you slipped?

A. I think they were so close there was scarcely any difference, if any.

Q. Practically even?

A. Practically even, yes.

Q. Did you notice any motion of the vessel at all as you [111] stepped in? A. None.

Q. Would you say there was none?

A. I should say there was practically none. The morning was a calm morning. There was scarcely a movement of the boat any more than on a very calm day, calm morning. It was not perceptible.

Q. Was your body entirely within the shower compartment?

(Testimony of Clinton J. Hutchins.)

Mr. DAVIS.—I submit that is asked and answered; he told him no, that he was getting in.

The COURT.—Objection overruled.

Mr. DAVIS.—To which ruling we most respectfully except, and assign the same as error.

Mr. WARREN.—Answer the question, please.

A. I couldn't say whether a chalk line would have caught me with any protuberance in the back. I was all in, all in both ways when I fell.

Q. What do you mean by a protuberance in the back?

A. Hardly admissible as evidence, I think. I was in the shower-bath; I had just stepped in and down I went. It was almost instantaneous.

Q. So that you were not in a position to have used either marble slab on either side to support yourself to prevent falling downwards as far as the marble slabs are concerned?

A. I don't see how the marble slabs could support me. My feet went one way and the marble slabs were there, and I went out where there were no slabs.

Q. You failed to see any opportunity to catch yourself by catching the slabs?

A. Not that kind of a slab. If it was a slab that I could [112] have caught hold of something to sustain myself I could possibly have, but there was nothing to hold on to.

Q. You preserved your balance entirely to your own satisfaction up to the instant of slipping?

A. Well, it was only an instant, believe me, Mr. Warren.

(Testimony of Clinton J. Hutchins.)

Q. Up to that instant?

A. Up to that instant, yes, one foot behind me until I pulled it over, and it was almost instantaneous. When I brought the other foot over and put any weight on it both feet went from under me, I didn't slip; I just went straight out as if I was stepping on ice, just flew out from under me. I came down with a perfect crash.

Q. Occupying about what length of time?

A. I didn't have a split second watch with me just at that time.

Q. In standing in the shower-room just before you slipped, were you facing any more to the right than to the left?

A. I didn't understand the question.

Q. With respect to the back wall of the compartment, were you facing practically squarely to the back of the shower compartment?

A. Why, I was practically facing straight back. It is possible that I was leaning slightly to the left, but very slightly.

Q. Did you at any time on that occasion pay any attention to the water-pipes on the wall?

A. No, I did not.

Q. Are you able to state positively that those pipes are tight against the marble slab?

A. Well, that is my impression of it. [113]

Q. You cannot state positively?

A. I think they are absolutely tight against it.

Q. In any event, you are positive that they are so close to the wall, if not tight, that you could not put

(Testimony of Clinton J. Hutchins.)

your fingers behind them and get a hold?

A. That is my impression. I did not put my fingers in to see, but that was my impression that they were so close they couldn't be taken hold of.

Q. You have inspected that two or three times?

A. I have, yes.

Q. And have not noticed that?

A. As I say, the notice I took of it, that was my impression, the impression conveyed to me, to my mind, that they could not have been taken hold of.

Q. If that as definite as you can make that answer?

A. That is as definite as I can make it.

Q. So, as a matter of fact, if those pipes are far enough apart for a man to take hold of and put his fingers behind, you didn't know it?

A. Well, I am speaking simply from my view of it, from what I saw. I saw it three times and I don't think a man could possibly get his hands behind.

Q. What was your object in going into the shower three times after the accident?

A. The first time I went in was while on the ship; that was out of curiosity. The next time was because I had complained to Mr. Stone, the chief agent of the company, who was in port, that he was maintaining a death-trap, and when the ship came back again I went in to see whether it had been changed or not, and when I went the third time I also [114] went for that purpose.

Q. You went there to examine the shower compartments? A. Yes, sir.

Q. And as I understand your testimony there was

(Testimony of Clinton J. Hutchins.)

nothing inside of the three walls of the shower compartment except these pipes? A. That is all.

Q. And you don't know enough to state positively how they are fixed?

A. Well, I have stated as positively as I can, right against the marble.

Q. Then, now, you state that positively?

A. I had intended to state it positively; yes.

Q. And you also state positively that there was nothing else inside of there in the way of a handle anywhere? A. There was nothing.

Q. Up to that third inspection, Mr. Hutchins?

A. Up to that third inspection.

Q. Do you know when the other man came into the room? You spoke of another man being in there.

A. He came in just before I got up to take my bath, just as I was taking my clothes off.

Q. And do you know where he stood in the room, or sat?

A. Oh, he was sitting down on a stool right opposite me when I got up to take my bath.

Q. He was where he could see you until you got inside of the compartment?

A. Why, I don't know positively whether I got entirely out of sight of him, but from where he was sitting I couldn't tell you whether he could see any portion of me or not, not [115] very much.

Q. How wide is the space between the two compartments on the floor?

A. I should say it was two foot six or so, two something over two feet.

(Testimony of Clinton J. Hutchins.)

Q. How long after you had fallen before you were first aware that he was assisting you?

A. Well, my impression was, my feeling was, he would come to me immediately, and I was surprised that he did not.

Q. Surprised that he did not?

A. Yes. I am not certain that I called him, but I was about to call him to help me. I think I did call him to help me before he came, and he put his arm under my neck and caught hold of my right arm to help me up, and got his arm under my body somewhere, and I put out my right arm to take hold of the handle of the door in the wall between these two compartments. It was low down and I reached up, when he lifted me up I reached up and got hold of it.

Q. You are certain that you did not lose consciousness at any time? A. Oh, absolutely not.

Q. With his assistance you regained your feet?

A. Yes.

Q. And he assisted you to walk to the stool?

A. Yes.

Q. And there you sat? A. Yes.

Q. While he summoned the deck steward?

A. He summoned the steward and then sent for the doctor, and the doctor came up.

Q. How long was it before the doctor arrived? [116]

A. Oh, it was only a few moments.

Q. A matter of a few minutes? A. Yes.

Q. How long have you known Dr. Macadory?

A. I first met him here while he was in the army;

(Testimony of Clinton J. Hutchins.)
possibly 1901 or '2, I guess it was.

Q. That was in Honolulu, Mr. Hutchins?

A. Yes.

The COURT.—It is now four o'clock; that is late enough to work.

Mr. DAVIS.—Sure it is.

The COURT.—We will suspend until to-morrow morning at nine o'clock, if that is agreeable. Adjourn court until to-morrow morning at nine o'clock. [117]

In the United States District Court, in and for the Territory of Hawaii.

AD. 147.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellees.

Honolulu, H. T., Saturday, February 17, 1917, 9:00 A. M.

Mr. WARREN.—If your Honor please, we are willing that Mr. Hutchins be withdrawn from the stand, so that Doctor Wood can take the stand and be excused.

The COURT.—Very well; proceed.

Testimony of Dr. C. B. Wood, for Libelant.

Direct examination of Dr. C. B. WOOD, for libellant, sworn.

Mr. DAVIS.—Q. Your name, Doctor?

A. Clifford B. Wood.

Q. Doctor Wood, are you a doctor of medicine holding a diploma [118] and licensed to practice medicine and surgery in the Territory of Hawaii?

A. I am.

Q. For how long have you—

Mr. WARREN.—I am perfectly willing to admit the qualifications of Doctor Wood.

Mr. DAVIS.—All right.

Q. Now, do you know the libellant in this suit, Mr. Clinton J. Hutchins? A. Yes.

Q. For how long have you known Mr. Hutchins?

A. A good many years. I couldn't tell you how many; more than ten.

Q. Now, in February of 1916, did he visit your office for the purpose of getting medical,—professional—did he visit you professionally?

A. Yes, my books which I looked up, state February 21, 1916.

Q. Did you make an examination of Mr. Hutchins, Doctor Wood? A. Yes.

Q. Will you, in your own language, please state what you found to be the trouble.

A. I found a disability of his left arm at the shoulder joint. He was unable to move it very much himself, and he wouldn't allow anybody else to move it very much because it was painful. I suspected, of

(Testimony of Dr. C. B. Wood.)

course, a fracture, from his condition and advised the taking of an X-ray *plant,* and the X-ray plate shows a fracture in the left shoulder joint, the humerus parenti—

Q. Doctor, did it take you long to come to the conclusion that there was a fracture there? [119]

A. Well, I didn't make any positive diagnosis until I saw the X-ray plate, but the symptoms were symptoms of fracture.

Q. Exactly, plainly visible to you?

A. Not so plainly visible, but plainly demonstrable. The fracture did not show any great amount of deformity. It belongs to the class that we call impacted fractures. There was no great misplacement of the bones or any particular deformity over the shoulder, but in moving his arm, which I did as well as I was able to, I did not note the slipping and grating sounds which we want when there is a displaced fracture, but these signs are all absent in what is called an impacted fracture, which his proved to be.

Q. Did you notice any discoloration on his body?

A. His whole shoulder was discolored, and away down on his chest and over his back a *dar* coloring under the skin. It was there a long time.

Q. Was this a serious fracture, Doctor, in your opinion?

A. Any fracture around a large joint is a serious fracture.

Q. Then you treated Mr. Hutchins?

A. I treated him until the latter part of March.

Q. What did you do, Doctor, the first thing after

(Testimony of Dr. C. B. Wood.)

you ascertained that this was a fracture?

A. I immobilized his arm, put it close up against him in this position and kept it there several weeks.

Q. By means of what? A. Bandages.

Q. Can you say as to whether or not Mr. Hutchins was suffering pain at that particular time?

A. He apparently was suffering a great deal of pain. [120]

Q. And how long did that continue, Doctor Wood, in your opinion?

A. Well, the pain continued as long as I treated him, when the shoulder was moved.

Q. From your examination in the first instance, did you have any trouble in believing that there was more than a bruise there?

A. I was satisfied at the first visit that it was something more than a bruise.

Q. From that first examination? A. Yes.

Q. Well, could any medical man with an ordinary knowledge of surgery be misled as to these symptoms, would he look for a fracture?

A. Well, I couldn't answer for any other medical man, I don't know.

Q. Well, you did, anyhow? A. I did, yes.

Q. You suspected a fracture right away?

A. I suspected a fracture as soon as I manipulated the shoulder.

Q. How long after the examination of his shoulder did you suspect a fracture?

A. Well, I presume the first examination took me ten minutes, ten or fifteen minutes, and I was very

(Testimony of Dr. C. B. Wood.)

well satisfied in my own mind that there was a fracture there some place.

Q. Did you notice any other wounds on the body of Mr. Hutchins during the time you examined him?

A. I don't recollect any now, with the exception of the shoulder joint.

Q. Was Mr. Hutchins—how is his physical condition? A. About as usual, I think.

Q. How long did it take before Mr. Hutchins was what we call— [121] what you would call even cured, relieved, so that he could use his arm for ordinary purposes?

A. Well, he went away, I didn't see him when he could use his arm for ordinary purposes. The last visit I have on my books as some time the latter part of March, I am not sure, about the 28th of March, and certainly at that time he was not using the arm for ordinary purposes.

The COURT.—He was not?

A. He was not.

Mr. DAVIS.—What was the effect of that fracture upon his arm and shoulder as compared with his right arm, as to length and so forth?

A. There must have been some shortening there in the bone, evidently, from the X-ray picture, because the shaft of the bone was pushed into the head of the bone, not to a great extent but to some extent. The head of the bone—the heads of all bones is composed of much softer bone than the shaft and is called cancellous tissue, and that means a spongey softer tissue, the ends of all long bones, and this here

(Testimony of Dr. C. B. Wood.)

shaft was pushed into the softer end of the bone, a sort of a cap over it, and being pushed into it necessitated some shortening of the length of that arm bone.

Q. As to whether that injury would affect Mr. Hutchins permanently or not, what would you say, in your opinion? What condition would it leave the arm and shoulder in, that is a better and plainer way of putting it.

A. At that time it was a difficult question to answer. At the time of the fracture if you would ask me that question, which he practically did, it would have been a difficult question to answer because there is always some uncertainty [122] about any fracture, and always more uncertainty about a fracture connected with a joint, close to a joint and including the joint. We don't know how large the joint surfaces are usually, don't know what the results of an injury to joint surfaces may be to the cartilages. Since he returned this time, a day or two ago, I examined the shoulder and found very little permanent injury. In putting his arm behind him this way it won't go quite as far as it ought to because of the pain, if you try to push it to a great extent, and by raising it over his head the same thing results, although you can get it pretty well up.

Q. Now, Doctor, did you render him any account for medical services?

A. I sent him a bill for $100.00, which he paid.

Q. Did Doctor Straub have anything to do with the treatment of Mr. Hutchins,—I mean in the examination of Mr. Hutchins?

(Testimony of Dr. C. B. Wood.)

A. Not to my personal knowledge.

Q. Just with reference to the X-ray?

A. As far as my personal knowledge goes.

Q. Doctor Hobdy, did you consult with Doctor Hobdy in the matter at all, Doctor Wood?

A. I asked Mr. Hutchins to have another plate taken because I thought we might be able to get a better one than Doctor Straub's plate, and I advised him to go to Doctor Hobdy and let him take another one, which he did. I saw the plate in Doctor Hobdy's office together with Doctor Hobdy. I think he took two plates, and I saw them both, and compared them together with Doctor Hobdy and talked [123] the matter over with him some at that time.

Q. In the bandaging of this shoulder, Doctor Wood, it has got to be done in a certain way, hasn't it? Will you just state to the Court because we have to get it from you. Will you state just what you did in the way of bandaging the patient's arm and shoulder.

A. I stripped him to the waist and then brought his arm up in this position and fastened it there with bandages and adhesive straps. I changed that because he is a heavy man and perspires very freely, and I changed it. In two days I removed all the bandages and washed his skin thoroughly with soap and water and then with alcohol and then powdered him and replaced my bandages. I think I did that every two days for a considerable length of time, several weeks.

Mr. DAVIS.—You may take the witness. [124]

(Testimony of Dr. C. B. Wood.)

Cross-examination of Dr. C. B. WOOD.

Mr. WARREN.—As I understand you, Doctor, on your first examination of Mr. Hutchins you spoke of a fracture, but were not able to determine just what it was.

A. Yes.

Q. Oh, I wanted to ask you, what time did Mr. Hutchins come to see you?

A. My belief is that he came in the morning of the 21st, although I cannot answer that positively because I am not sure. I did not make any note of it. I might be able to tell positively by looking up my personal notes on that day, that is, judging where his visit occurred with other visits later on in the day, but my belief is that he came in the morning from the steamer soon after the "Great Northern" came in. He told me that the injury occurred on the "Great Northern" and he came to my office on Beretania street for the first examination and for all subsequent examinations.

Q. To what extent did you manipulate his arm and shoulder on the first examination?

A. Well, I manipulated it to a great extent as he would permit me on account of the pain. I brought it forward in this position and I brought it back in this position as far as I could, took it away from his side as far as he would allow me and attempted to rotate it this way, that is, rotating the bone in this socket. All of these motions were painful, they all made him cringe. The [125] involuntary contractions of his muscles, involuntary to the extent

(Testimony of Dr. C. B. Wood.)

that he did it to escape pain, of course, made a thorough examination at that time difficult but I managed to get over it enough to satisfy myself that there was something the matter with his shoulder joint and was trying to get the characteristic—the specific term is crepitus. Crepitus means rubbing the broken ends of bones together, and I was trying to get some such crepitus so that I would be absolutely sure it was a fracture. On account of this being an impacted fracture without any slipping and on account of the limited amount of motion I was able to put the shoulder through I failed to get any crepitus and also from the failure to make extensive movements of his shoulder joint on account of the pain.

Q. From the appearance of the arm and shoulder and its apparently sore condition at that time, would you entertain the opinion that when the accident occurred there must have been a great deal of pain at that time immediately following the injury?

A. I think there must have been pain at the time of the injury, because a fracture in a joint is always a painful thing. With the joint at absolute rest and the person reclining there might not be pain, but any movement, even of his body which would necessitate the use of the muscles around there, or raising the body, would move these fractured surfaces and would bring a strain, and even if the surfaces did not move it would bring a strain on the fracture and would cause pain.

Q. How in your opinion would that in an ordinary

(Testimony of Dr. C. B. Wood.)

case compare [126] with the pain, say, two days later, as when you two or three days later examined the member, greater or less,—or let me put my question in another way. Would the manipulation of the injured part be more painful at the time of the injury than later?

A. Manipulation somewhat depends on the time after the fracture, whether it is a serious fracture or a wound with the tearing of the tissues immediately. For a few minutes after the injury there may not be very much pain. There is a numb, dull, helpless feeling there, but the acute sharp pains do not follow immediately after the injury. That follows some time later, that is, the nerves are injured, the nerves have been blunted, mechanically injured and they are not capable of carrying the impression of pain to the brain. But it is only a matter of a short time, a matter of minutes, or anyway, less than sixty minutes after that the pain starts, nearly always at first a sharp tearing pain that keeps on for a while until the nerves get tired out and tired of carrying the impression of pain and settle down. Then the pains might be not so very great with a person who is absolutely quiet, but movement causes pain because it wrenches these sensitive nerves again. Now, a man going to a doctor's office like he did and having the joint manipulated would suffer more pain at the beginning of the manipulation than he would have if he went on later. The first movements would cause these nerves to cringe and would cause pain. Continued manipulation limbers the muscles up a

(Testimony of Dr. C. B. Wood.)

little bit, and the nerves would stop crying out so imperatively on account of the [127] pain, and later manipulation would be able to make greater manipulation and they could be made with less pain. Allowing some hours to intervene, perhaps a day, and the patient on returning to your office and beginning the same manipulations again, the same thing would occur. In beginning the manipulation the pain would be greater than if we worked the arm a little while.

Q. If you might say practicable purposes is there any substantial difference in the pain, given a person by manipulation say within an hour after the accident, or thirty minutes, and a day or so later?

A. There might be more pain at a later time because not only the nerves have been injured but the tissues around have been injured. The constant result of any injury to the tissues is to cause an increased—the first thing it does is to cause an increased flow of blood to that part, there is an increased flow of blood and there is a certain amount of diffusion of the fluids. Then inflammation might result. If it does not go on to the extent of inflammation but a step short of actual inflammation there would be a congestion there and a stretching of the tissues, and there would be increased pain later on from the manipulation, more than there would be at the very beginning.

Q. Substantially more?

A. If inflammation sets in then very substantially more.

(Testimony of Dr. C. B. Wood.)

Q. Now, in this case on the first examination, you say you did not get any definite signs of fracture?

A. No, I did not say that. I said I did not get perhaps [128] the definite physical signs of fracture, I did not get the cardinal signs of fracture which are deformity and crepitus.

Q. You felt it was advisable and necessary to have an X-ray plate taken in order that you could get a physical inspection, say, to inspect the bonds themselves?

A. I thought it was very advisable indeed to be absolutely sure of my diagnosis.

Q. You did not feel altogether satisfied with the one that had been made by Doctor Straub?

A. No, it is not what we call a very good plate. I thought a better plate could be made.

Q. Was that on account of the direction or point of view of the plate, or because it had been poorly developed or was defective?

A. It is an advantage always to have two plates taken from different points of view around the fractures, they are very deceptive. You get one for the front and one behind the fracture. If it is only one, it shows some portion of the fracture and some other portion may be absolutely not shown at all. You want to get angles, and I wanted more than one plate taken from different angles. Another reason was that there are usually failures in proper exposure in making a plate, or in defective development, or an inferior machine, and when I say inferior machine I do not mean a bad machine but I mean one

(Testimony of Dr. C. B. Wood.)

that is inferior to the best. I was not satisfied with that plate and I knew that Doctor Hobdy had just installed the very latest type of machine and that he was doing excellent work with it. I had seen plates of his that were far better plates [129] than the one which Doctor Straub had taken and I wanted to have him try his machine on this particular case and get pictures from two different angles.

Q. When was the plate taken by Doctor Straub, do you know?

A. Why, it is dated there, I don't know, but I think on the day of the injury, the 21st of February.

Q. That date was February 21st?

A. The same day that he consulted me.

Q. And when did you receive that plate?

A. I could not state that positively, but to the best of my recollection I rung up Doctor Straub and asked him about it and he offered to send it over to me and did send it over to me. The reason that I have any recollection of it is that it might be important to introduce the plate in evidence later on and that it would be well for me to have the plate in my possession, that is, not to allow it to pass through any other hands except Doctor Straub's and my own. I know that I had that impression regarding the plate.

Q. When did you get it, is the question.

A. I got it within a day or two, I cannot answer that positively because I made no note of it.

Q. It might even be as much as two days before you saw the plate for the first time?

(Testimony of Dr. C. B. Wood.)

A. It is possible, because I do not remember.

Q. When you had received that plate how long after that was it before you advised Mr. Hutchins to have another taken by Doctor Hobdy?

A. My impression is that I advised him right away. [130]

Q. And when did you after that see the plates that had been taken by Doctor Hobdy, or any plate?

A. I saw the plates, I should say, thirty-six hours later, within thirty-six hours. My impression is in a lesser time from the time that Doctor Hobdy took the plates because I remember perfectly being quite interested in it and I went to see the plates, went to his office for that purpose, and I certainly did not allow very much time to elapse, although I cannot tell you exactly.

Q. In immobilizing the arm as you have stated, that consisted in tying it up in the most comfortable position and preventing it being moved?

A. Yes, the main object was to prevent its being moved. It is a place where splints are not very applicable, over a shoulder joint. It is almost impossible, it is impossible to satisfactorily apply splints, you can't make the splints fit in such a position that they will do the work you are trying to accomplish. You can do a great deal more by immobilizing the arm itself. It can be done with bandages and plaster of paris cases. I considered both methods and considered it was sufficient to put it up snugly in bandages and keep my eye on the bandages rather than fasten him up in a big stiff plaster of paris cast.

(Testimony of Dr. C. B. Wood.)

Q. The shoulder did not require then what you would call setting, it was not out of position?

A. No.

Q. And you say there was no outer indication except the discoloration and some swelling to indicate that there was anything wrong? **[131]**

A. That is as far as eyesight is concerned, you mean?

Q. Taking that kind of an injury immediately after its occurrence before there could be any discoloration or inflammation, would you say that a doctor of ordinary experience would be making a serious mistake if he did not diagnose it as a fracture? A. That is a hard question to answer.

Q. You would not be prepared to say—

A. I think the circumstances would have to come in. I could not answer that question.

Q. Considering that an accident of that kind occurred at sea, and two or three days, between two and three days of the voyage remaining, what in your opinion would have been the best thing to have done for Mr. Hutchins under the circumstances until he got ashore?

A. If he were injured two or three days before landing and went to a physician, any physician for examination and diagnosis and treatment, it seems to me that during these two or three days provided that the physician was given an opportunity to see the joint, to see the shoulder after his first examination he should discover that there was something more than a bruise, an external injury, and discover-

(Testimony of Dr. C. B. Wood.)

ing that should make the best effort possible to find how extensive that injury was. He should certainly have a suspicion that the joint was injured if he was in the condition that he came to my office, and finding the probabilities that the joint was injured and that there was something inside which he could not see, something that was more than evident than was on the outside, I should say it was his duty to treat the arm by immobilizing it. [132]

Q. You say that at the first examination you consider that it would not necessarily follow that he should diagnose it as a fracture, on the first examination?

A. No, I think it would not be necessary. In my opinion, knowing nothing of what did occur, I know absolutely nothing of what occurred, my opinion would be this: that if the patient called on the doctor and reported the accident or injury to his shoulder the doctor might conclude that it was painful from being bruised, and if the passenger went about his business and never went near the doctor again he might think that was the end of it, but certainly if the passenger went to him later on and complained of the shoulder still paining him, if he acted anything like he acted when he came to my office having absolute nonuse of that arm and holding it up by the help of his free hand and cringing away whenever we attempted to move the shoulder joint, if these symptoms were present in any subsequent visit to the doctor, I think the doctor should have made a thor-

(Testimony of Dr. C. B. Wood.)

ough investigation and tried to find the extent of the injury.

Q. But in the event that the patient after the first examination was around and about the vessel within an hour and did not thereafter consult the physician, what would then be your opinion?

Mr. DAVIS.—Those are not the facts in this case, your Honor. Mr. Hutchins says the doctor gave him these two pellets and went away, and came around the next morning and didn't do anything.

The COURT.—I will admit the proof. Go ahead. [133]

Mr. DAVIS.—No foundation—

The COURT.—Go ahead and answer the question, Doctor.

Mr. DAVIS.—To which ruling we respectfully except and assign the same as error, and on the ground that it is assuming something that has not happened and that there is no evidence of it, no foundation laid.

The COURT.—All right.

A. I should say that if the patient failed to further consult the doctor, if you speak about his being around on deck, if he were around on deck in the normal way mingling with other passengers and taking part in things which were going on on deck, going to the table for his meals and using both hands in a normal way and the doctor observed this, I should say he is not to be blamed without further consultation for anything which may have turned out to be more serious than he thought at his first ex-

(Testimony of Dr. C. B. Wood.)

amination, that is about my opinion.

Mr. WARREN.—That is all; thank you, Doctor. [134]

Redirect Examination of Dr. C. B. WOOD.

Mr. DAVIS.—And if he was going around the deck with his arm this way all the time and the doctor observed it, wouldn't it be his duty to make a further examination? A. Yes.

Q. Now, then, Doctor Wood, on your first diagnosis you had no doubt in your own mind but what there was a fracture there?

A. I did not state that, Mr. Davis, I stated—

Q. But did you believe there was?

A. I believed there was.

Q. Yes, and the symptoms of that were not only absolutely demonstrable, but to your own mind led you to believe there must be a fracture?

A. I believed there was a fracture, and I stated to Mr. Hutchins at the time that there was probably an impacted fracture. I could distinctly remember that.

Q. Assuming then that these are the facts, that the doctor visited him within a few minutes after the accident and went in the stateroom and made an examination and did nothing more than to give him two pellets and go out, and the next morning came back and made no further examination do you think that he—and came back the second time and made an examination, don't you think that he would be able to discover that there was something more than a bruise the second day?

(Testimony of Dr. C. B. Wood.)

A. When you say the second time you mean after what interval?

Q. Twenty-four hours. [135]

A. In my opinion he would.

Q. Yes, and now, Doctor, do you think—I want you to bring out clearly without leading you, I want the condition as to permanent—will this injury affect Mr. Hutchins for any length of time from now on?

Mr. WARREN.—I would like to object to that question, your Honor, as not being proper redirect examination, and moreover already covered by direct.

Mr. DAVIS.—I don't think it has.

Mr. WARREN.—And not touched upon in cross.

The COURT.—Possibly it may not be redirect examination, but I overrule the objection and will allow the question to be answered.

Mr. DAVIS.—I will ask your Honor to permit me to ask the direct question which I omitted in direct examination.

The COURT.—All right.

Mr. DAVIS.—Well, go ahead, Doctor, with that one.

A. Judging by the effects which I know of the nature of the injury, my knowledge being based on his condition when he came to my office and my observation of the X-ray plates which were identical and taken in connection with a recent examination after a lapse of nearly a year, my opinion is that there would be no serious permanent injury—no serious permanent result, that there may be some

(Testimony of Dr. C. B. Wood.)

slight permanent result in the limitation of all the motions of the joint and perhaps twinges of pain in making extreme motions of the joint for some considerable time longer, I think is evident enough, but the joint can be moved fairly freely. I don't know how much personal use he has of the arm, I don't know how much he has tested it [136] regarding strength, the strength of the muscles without pain, I have not questioned him on that point, but after the present lapse of time the evident noninjury to the important nerves which would have been manifest after this lapse of time by the acrity of the muscles which has not occurred, my opinion is that there has been no serious permanent impairment of the joint.

Q. Doctor, do you think that the effect,—that the fact that this injury happened on the 18th and that no bandaging of that arm or other methods were adopted until the vessel arrived here on the 21st, what effect would that have on the arm, with nothing done at all towards it?

A. It would have the effect of having unnecessarily submitted the patient to pain.

Q. What would have been the result if it had not been bandaged up?

Mr. WARREN.—That is supposition.

Mr. DAVIS.—What was the effect of not doing anything towards bandaging it from the 18th down to the time he came to you?

Mr. WARREN.—That has been asked and answered, your Honor, the answer was that it would

(Testimony of Dr. C. B. Wood.)

probably subject him to unnecessary pain.

Mr. DAVIS.—And what else?

A. You mean what was the actual effect?

Q. What might have been the result?

A. Well, might have been, that is a different question.

Mr. WARREN.—I object to that as speculative. [137]

Mr. DAVIS.—Well, what could have been; that's the idea.

A. I will state to the Court that that is a very essentially different question. It brings up something entirely different.

The COURT.—It is immaterial what could have been, Mr. Davis.

Mr. DAVIS.—Then that is all that did happen, was pain? A. In my judgment, yes.

Mr. DAVIS.—That is all.

Recross-examination of Dr. C. B. WOOD.

Mr. WARREN.—I want to ask, Doctor, if from your examination of the injury you could determine the manner in which that injury had been sustained; in other words, how the patient had fallen?

A. To some extent.

Q. How he struck, I mean.

A. I can, to some extent. I have been speaking right along of an impacted fracture, that is perfectly true, a portion of the fracture was impacted as I have described. There was something further to the fracture than that, not only the impaction, but there was the loosening of a certain portion of the

(Testimony of Dr. C. B. Wood.)

bone itself, a distinct fracture in which one portion of the bone was separated from another portion and not impacted. It happened to be on the outer corner, it was the edge of this corner—the edge of [138] this shoulder of the arm bone where it comes up into the shoulder joint, and actually fractured off a piece of bone about as long as that—now, I have lost the drift of your question.

Q. The question was, how he had fallen.

A. Oh, yes, taking into consideration that the fracturing off of a piece on the outside of the bone and considering the fact that the shaft was pushed into the head of the bone, I should say that the arm must have been to some extent away from his side, and that the blow must have been received down here or on this part of the arm so as to drive the shaft towards the shoulder.

Q. That is, in your opinion the arm could not have been straight out—

A. Well, I base my opinion on both injuries. It is absolutely essential that the bone must have been driven,— that the whole length of bone must have been driven towards the shoulder, otherwise the impacted fracture would not have occurred. Now, the fact that this piece was fractured off leads me to believe that the arm was at some distance any way away from the side when the blow was received because, had it been close here I don't believe that piece would have been fractured off, and had it been clear out in an extended position I don't think that piece would have been fractured off.

(Testimony of Dr. C. B. Wood.)

Q. So that the patient having lost his balance and putting his arm out straight in an endeavor to catch himself in falling, do you think the fracture or breaking would not have occurred? [139]

A. I think not if he fell on his hand. If he fell on his elbow, it might.

Q. Could you then draw any conclusion from the general appearance of the injury to determine whether that fall was sudden, say, too sudden to enable any opportunity to put out an arm to catch himself?

Mr. DAVIS.—Now, I object to that, your Honor.

Mr. WARREN.—Withdraw the question.

Q. Could you determine, Doctor, whether or not on that fall the patient had fallen more directly sideways or toward the back or front?

Mr. DAVIS.—I object, your Honor; I think the doctor has made a sufficient statement from his examination as to the proper position of the arm. He said if he fell on his elbow he might have had his hand out reaching for something, and if he fell on his hand it was different.

The COURT.—Read the question, Mr. Reporter.

Last question read by the reporter.

The COURT.—Answer the question, Doctor.

A. I should say more sidewise.

Mr. WARREN.—And if any way other than sideways would it have been more to the front than to the back?

A. I don't think it is possible for anybody to answer that question, because the arm is a movable

(Testimony of Dr. C. B. Wood.)

thing at the shoulder. A man can fall in a forward position and throw an arm back and land on his elbow, for instance with the full force direct to the shoulder, or he may fall forward and throw his arm forward and land on his elbow and still apply the force directly toward the shoulder, or he could [140] fall sidewise the left arm from the side and still apply the force directly toward the shoulder. I think it is impossible to answer that.

Q. But wouldn't the shoulder joint show whether the impact had been direct from the side or had been more from the back or from the front, an impacted defect to show the direction or indicate the direction?

A. A hard question to answer. I don't think so. Not when the injury is entirely to the humerus, it is when the socket is not involved.

Redirect Examination of Dr. C. B. WOOD.

Mr. DAVIS.—The nature of this injury could in no way, Doctor, enable you to tell what Mr. Hutchins was doing with his right hand at the time he fell, immediately preceding?

A. No, nor his right foot. I don't see the connection.

Q. Is that the plate brought to you by Mr. Hutchins or sent to you by Doctor Straub?

A. My recollection is, I am not going to state this positively even if it is necessary to identify the plate, but to the best of my belief this is the plate which Doctor Straub sent to my office and that I have kept in my office ever since.

(Testimony of Dr. C. B. Wood.)

Q. Ever since, all right. [141]

Mr. DAVIS.—I will now ask that this be marked for identification, and when Doctor Straub comes I am going to put it in evidence. That is all, Doctor Wood.

The COURT.—I wish to ask the doctor a question. Doctor, if I understand you, this is what you call an impacted fracture? A. Yes.

Q. Caused by the bone being shoved up into the joint? A. Yes.

Q. The hard portion of the bone being shoved into the soft portion? A. Yes.

Q. Well, you say the symptoms indicated that before you got the X-ray?

A. They indicated it because the symptoms were a serious injury to the joint which meant a probable fracture, and in the absence of deformity and a crepitus my opinion then was that it was an impacted fracture. That is the difference. And having made up my mind that it was an impacted fracture and having formed the judgment that it was fractured, and then failing to get a crepitus, or displacement or bone deformity I judged it was impacted because these things were absent.

Q. Well, of course without the X-ray you determined from the symptoms that there was a fracture before you saw the X-ray? A. Yes.

Q. Of course, before the X-ray pictures were taken that was all that doctors had to go by. All right, now I will [142] ask you, should a competent physician knowing, or hearing from a patient how

(Testimony of Dr. C. B. Wood.)

the injury had occured, knowing how the injury had been sustained, observing the symptoms, and knowing the history of the case as I believe you physicians call it, should a competent physician have known that there was probably an impacted fracture at the time he first examined him immediately after the injury was sustained?

A. I think he should have suspected it, and suspecting it should have taken all the means he considered necessary and best to prevent motion of that joint.

Q. I understand you then to say he should have suspected an impacted fracture from the symptoms, a competent physician knowing the history of the case and knowing how the injury had occurred?

A. He should have suspected—

Q. From the symptoms?

A. He should have suspected, strongly suspected an injury to the joint, and a careful examination with present findings and barring out other things should have led to the opinion just as it did lead to the opinion in my own case, that there was an impacted fracture there.

Q. Now, the treatment for an impacted fracture is what you gave, is it? A. Yes.

Q. A fixing of the arm so as to take away—so that it cannot move, is that what you call it, what is it?

A. Immobolization.

Q. Immobolization of the arm. Is there any in that treatment [143] that would have been improper to the treatment of a bruise?

(Testimony of Dr. C. B. Wood.)

A. No, nor a sprain.

Q. The immobolization of the arm would have been just as proper for the treatment of a bruise or a sprain as it would also for an impacted fracture, is that correct? A. Yes, that is correct.

Q. So, if I understand you, a competent physician should have strongly suspected that there was an impacted fracture on his first examination and should have treated him for that, should have treated him for an impacted fracture?

A. He should have treated it for a probably injury to the shoulder joint.

Q. Yes, he should have treated it for an injury to the shoulder joint. A. Yes.

Q. Well, from the symptoms that must have been visible should a competent physician have immobolized the arm first that morning?

A. By visible, you mean actually visible to the eye?

Q. I am talking about the injury, you understand what the nature of the injury was? A. Yes.

Q. Then as a physician, you understand what the symptoms must have shown immediately after the injury was sustained? A. Yes.

Q. Well, now, we will suppose that a competent physician sees these symptoms shortly or very soon after the injury occurs and knows how the injury was sustained. Now, I will ask you how a competent physician should have treated the injury. [144]

A. He should have immobilized that shoulder joint.

(Testimony of Dr. C. B. Wood.)

Q. Immobilized the shoulder joint?

A. Yes, sir.

The COURT.—That is all.

Mr. DAVIS.—Stronger reasons would exist for a physician doing that on the second occasion, twenty-four hours after?

A. Yes.

Mr. WARREN.—I wish at this time, your Honor, so that there shall be no misunderstanding about it, give notice that I shall move to strike all testimony as to the competency or incompetency of the physician unless it is going to be followed by proof of the further allegation which has been made that incompetency even if it did exist, existed to the knowledge of the company.

Mr. DAVIS.—We will settle that right here; I just put that in the allegation, that they had knowledge, but that is not necessary. Their duty is to employ a competent physician, and if they don't it is a violation of the contract, knowledge is not necessary.

Mr. WARREN.—I am giving notice now; later I will make the motion.

The COURT.—All right. You are excused, Doctor. The Court will take a recess for five minutes.

AFTER RECESS. [145]

Testimony of Clinton J. Hutchins, in His Own Behalf (Recalled—Cross-examination).

Cross-examination of CLINTON J. HUTCHINS (Continued).

Mr. WARREN.—Regarding the porcelain basin in

(Testimony of Clinton J. Hutchins.)

the shower compartment into which you stepped, you spoke of it as having a slippery surface?

A. Yes.

Q. Can you state whether that porcelain basin is any way different from the ordinary porcelain of the porcelain bath-tub?

A. I don't—it is a glazed surface. I used to be in the plumbing supply business at one time and I am pretty familiar with these things, Mr. Warren, it is what is known as Imperial ware, I think. I examined it carefully and it is the same as is used in bath-tubs and showers in houses, the same material.

Q. The ordinary white porcelain bath-tub?

A. No, you mean the iron tub, it is different from that, and I think much more smooth the surface is. It is perfectly smooth, glazed.

Q. The surfaces of all bath-tubs in ordinary use in houses, in households, porcelain tubs, are glazed in the same way, are they not?

A. I don't know as to the method, but this is more perfect. The glazing of the iron very often will craze a little, and this is more perfect than that.

Q. In falling you say you struck in the opposite shower compartment? A. Yes. [146]

Q. How far in?

A. I couldn't say that. I can only judge from the way my arm flew out from under me, I think I went just over the edge of it.

Q. That is, that your left arm went into the basin of the other compartment?

A. Yes, of the other compartment.

(Testimony of Clinton J. Hutchins.)

Q. Have you a recollection of how you laid there immediately after you fell, whether on your back or side?

A. I was on my side, bridged across between the two, my head in one shower and my feet in the other.

Q. You have spoken of the three marble walls of this compartment as being polished marble. Did that fact contribute in any way to your falling?

A. Not the slightest.

Q. It would not have mattered whether those walls were polished or rough? A. Not the slightest.

Q. You have mentioned two pipes on the left well?

A. Yes.

Q. Are you sure there were not three?

A. I do not think there were three.

Q. What is that?

A. I said I do not think there were three.

Q. If there were three you did not notice them?

A. If there were three I did not notice them.

Q. In your three examinations?

A. In my three examinations. My impressions are there were only two. [147]

Q. In falling did both of your feet fly out simultaneously, or first one and then the other?

A. Practically about the same time. When I felt myself go both feet flew out, there was no stopping till I finally I found that I had struck something. My large toe was black the next morning. My feet went out that way and I caught myself here. The soreness here did not disappear for months.

Q. Did you have any warning whatever of the slip

(Testimony of Clinton J. Hutchins.)

before it occurred? A. Practically none.

Q. You had time only when you realized your feet had flown out to endeavor to turn and strike as safely as you could?

A. I grabbed for anything this way, and threw out this hand and then I went down.

Q. That is, you grabbed out with your right hand?

A. Yes.

Q. That was a spasmodic grab, to grab hold of anything there was to catch hold of?

A. Yes, anything.

Q. You did not have in mind that you were grabbing at any particular thing? A. Nothing at all.

Q. It was practically an involuntary grabbing motion to save yourself? A. That's it.

Q. Which you might have made if you had been in clear air? A. Yes. [148]

Q. Were you feeling the water with one or both arms?

A. Both, rubbing it on my arms this way with my hands.

Q. When the doctor examined you on reaching your room you were sitting on the settee?

A. Well, he took me in, he and the steward; I think the two took me in the room, and the doctor was one of them.

Q. Your room or the doctor's?

A. My room. Our room was right at the end of a little passageway almost directly opposite to the door leading to the shower-bath.

Q. And you then had—you were stripped when he

(Testimony of Clinton J. Hutchins.)

made the first examination?

A. Oh, yes, I was stripped for my bath, and they just put the clothes over me and carried me in.

Q. And how long a time did he occupy in making the first examination?

A. Why, I don't think he took more than about five minutes. I kept complaining, and I told him it was my shoulder, I told my wife that my right shoulder was injured, and I told the doctor; I said, "I think, Doctor, I have broken my shoulder," and after he sat down he moved my arm around a good deal.

Q. He moved it a good deal?

A. Yes, that is, he took it just about the way that Doctor Wood indicated.

Q. And then assisted you to your bunk or berth?

A. To my berth; yes.

Q. And did he give you any advice or instructions?

A. No, he gave me some pellets instead. [149]

Q. Did he give you any advice or instructions?

A. No, I don't think so, not that I remember.

Q. He may have?

A. I think I would remember them if he had.

Q. To your best recollection he gave you none?

A. Yes, to the best of my recollection; yes. Of course, he said it was just a bruise or a sprain, a bad sprain, and would be all right in a few days.

Q. How long did you remain in the berth?

A. My recollection is about half an hour. It was so painful that I couldn't lie there.

Q. The doctor having left you the first time, how long was it before he came back?

(Testimony of Clinton J. Hutchins.)

A. He went out and got these pellets and came back.

Q. How long a time?

A. He was only gone a few minutes, only a few moments; just after they laid me in my berth.

Q. Then having left you that time when did he next return? A. The next morning.

Q. He didn't come back to your stateroom and find you dressing? A. No,—that first morning?

Q. That first morning. A. No.

Q. You are positive?

A. I am positive of that; that is, I didn't see him. If he came I wasn't aware of it.

Q. And then you went out on deck? A. Yes.

Q. And went around the ship?

A. I went up and sat in my chair. I had a chair, and sat down there for a while. [150]

Q. Where did you take your meals?

A. In the dining-room.

Q. Take your lunch there? A. Yes.

Q. All of your meals, in fact? A. Yes.

Q. How late were you up that night with the mock trial, how long did that take?

A. It only took a short time. I felt as though I wanted to stay up all night. I went to my room when my wife wanted to retire,—I retired about the same time, but as soon as I thought she was asleep I got up and sat on the settee. I couldn't get on my back at all. If I got on my right side and have my arm placed in such a position as it would be comfortable as soon as I dozed off it would be very painful and

(Testimony of Clinton J. Hutchins.)

would wake me up immediately, so I couldn't get in any position where it would be comfortable. I got on the settee and would brace myself in the corner and would half doze there and the least roll would wake me up.

Q. Now, you say he came to see you the next day?

A. Yes, the next morning.

Q. And examined you, manipulated your arm?

A. Yes, to some extent. It was very painful and he couldn't do much.

Q. As much as the first time?

A. There was a great deal of rigidity, couldn't move it at all. It was so rigid I could hardly get my undergarments on. I wore short sleeves and couldn't hardly slip that over.

Q. After that on the voyage did you see him occasionally about the ship?

A. I saw him every day. [151]

Q. And was the subject of your injury mentioned between you?

A. Oh, yes; he asked me how I felt and I told him I felt as well as could be expected, I felt fairly well.

Q. Did you ask him to make any further examination?

A. I didn't think it was my business to ask him.

Q. You did not ask him?

A. I did not ask him.

Q. You have stated that when you went ashore at Hilo that you saw no other doctor there.

A. No.

Q. Did you endeavor to find one?

(Testimony of Clinton J. Hutchins.)

A. No, I did not.

Q. What did you do at Hilo at that time?

A. Why, Mr. and Mrs. Eckart, of the Olaa plantation, met us and drove us out to the plantation, and then we came back in the afternoon and I saw some people in Hilo,—Mr. Thurston, particularly.

Q. You went out by automobile? A. Yes.

Q. Do you know whether or not the captain of the ship knew of your accident?

A. I haven't any idea.

Q. Did you report it to him? A. No, sir.

Q. You met him about the deck?

A. I don't know as I did. I only spoke to him once, I think, and when that was I don't know. I didn't get much acquainted with him.

Q. The stewards of the vessel served as often as they were called? A. Yes.

Q. For what you asked of them?

A. Yes; especially the steward at the table was very thoughtful; [152] he cut my meat up for me and helped me all he could.

Q. Just why did you go on board the "Great Northern" on her first return to Honolulu and go into that shower-room, what was your purpose?

A. I had complained about the condition of the shower as it was maintained by the ship, and I was down at the Union Feed Company, and as I went along I went in to see whether any change had been made in the shower of any kind. I recommended to Mr. Stone that they tear out these slippery bowls and put in smooth concrete so that it would hold.

(Testimony of Clinton J. Hutchins.)

Q. Have you ever seen smooth concrete in shower-rooms on board a vessel?

A. No, but I never have seen anything of this kind exactly, but I have always seen in all ocean trips I have made, in shower-baths, either a large railing or a firmly fixed handle to hang on to, or a grating for the shower.

Q. Your second visit to the vessel on her next trip, or the time you made your third inspection, was for the same purpose?

A. The same purpose; yes. I happened to be down at the Union Feed Company also and as I came back I went aboard.

Mr. WARREN.—For the purpose of identification, your Honor, I wish to refer to the three photographic prints which are marked Plaintiff's Exhibits 1, 2 and 3, attached to the deposition of W. A. Scott which are on file, I simply wish to show these to the witness, being photographs of the interior of this bath-room, as I understand it, and ask you to look particularly at Plaintiff's Exhibit 3, and ask you if that appears to you to be a photograph of the shower-room? [153] A. It appears to be; yes.

Q. Now, I call your attention to a handle or grab-iron in the back of that, in the center of the picture. I understand you to testify that there was no such a thing there at the time of the accident?

A. There was not.

Q. That is your absolute positive statement?

A. Absolutely. That handle was not there at the time I fell. It was not there at the time of the

(Testimony of Clinton J. Hutchins.)

second visit, and it was not there at the third visit.

Mr. WARREN.—I ask that the record show that this exhibit has been referred to in connection with this witness' testimony for identification.

Q. You are wearing glasses, Mr. Hutchins?

A. Yes, sir.

Q. How long have you worn them?

A. About twenty years.

Q. You wear them constantly? A. Yes.

Q. Did you have them on on that morning?

A. No.

Q. Are you able to see as well without glasses as with them?

A. Not as clearly. I can see everything but it does not clear up until I put my glasses on.

Q. Now, with regard to the matter of your average income which you referred to, you say an average of fifteen or twenty thousand dollars per year; for what period does this average cover?

A. Well, it is not very often that I make less than that.

Q. Well, you have given that as an average; over what length [154] of time?

A. Well, during the last eight or ten years I should say.

Q. That is your own individual income?

A. Yes.

Q. Not including in that the income of the concern you have mentioned, the farming business?

A. No.

Q. This is also net, and not gross?

(Testimony of Clinton J. Hutchins.)

A. You mean by that?

Q. That is your clear income over expenses?

A. You mean over my living expenses?

Q. I mean that is your clear income, as an individual, of your business?

A. Certainly, that much and sometimes considerably more.

Q. And that has been the average for eight or ten years? A. I think so; yes.

Q. In this matter of brokerage, you having said your business was particularly that of buying molasses as a broker; what principals have you represented in the last year?

A. I represented the Western Grain & Sugar Products Company and Summers & Company, and then I represented also a concern in Chicago.

Q. With which of those concerns have most of your molasses buying contracts been consummated?

A. The Western Grain and Sugar Products Company.

Q. Your trip to the islands at that time was in their interests? A. Yes.

Q. When did you return again to the islands,—you say in May? A. Yes. [155]

Q. Of 1916, for the purpose of buying molasses?

A. Yes.

Q. And how long did you remain then?

A. Three months; that is, I remained here from the 15th of May to the 1st of August, because I was away from home three months.

Mr. WARREN.—That is all.

(Testimony of Clinton J. Hutchins.)

Redirect Examination of CLINTON J. HUTCHINS.

Mr. DAVIS.—Now, Mr. Hutchins, how many times did you see that Doctor Macadory on the vessel after he made the second visit to your stateroom?

A. I would see him every few hours.

Q. Every few hours? A. Yes.

Q. Well, now, how many times?

A. Oh, I must have seen him a dozen times.

Q. Just show the Court how you held your arm when you seen him each time.

A. I had the fashion of unbuttoning my vest in front and putting my hand through in the vest and carrying it in this way.

Q. With your other hand supporting it?

A. With my other hand supporting it.

Q. That is the way you went around each time you met the doctor? A. Yes. **[156]**

Q. And he seen you? A. Yes, he saw me.

Q. Saw you, thank you for the grammatical correction. A. Yes, I wanted it in the record.

Q. Well, he saw you? A. Yes.

A. He made quite an examination of your arm, did he, the second time he came to the stateroom?

A. Well, he wasn't there very long.

Q. Well, how long was he there?

A. Eight or ten minutes.

Q. Yes, and you were stripped? A. Yes.

Q. Low down? A. To the waist.

Q. Lying down? A. No, standing up.

Q. Did he have anybody with him? A. No.

Q. How many times did you meet the captain of

(Testimony of Clinton J. Hutchins.)

that vessel after this accident happened?

A. I saw the captain, I think it was the—I am not certain, Mr. Davis, but I think it was the day before we got into Hilo.

Q. How were you carrying your arm then?

A. As I remember it, in the same position.

Q. In the same position you have already described to the Court when you met the captain?

A. Yes.

Q. And did he see you?

A. Well, he must have seen me.

Q. Did he speak to you?

A. Well, he spoke to me but he didn't mention the injury.

Q. Eh? [157]

A. He spoke to me but didn't mention the injury at that time.

Q. He did speak to you? A. Yes.

Q. Now, did he see you come in—at any time did you meet him at dinner or anything?

A. Not to my knowledge.

Q. Not to your knowledge. Who was the person that assisted carrying you in or assisting you from the shower-bath to your stateroom, outside of the doctor? A. I think it was the bath-room steward.

Q. Bath-room steward; and now when you got to Honolulu you visited Doctor Hobdy professionally?

A. Well, yes, some time after I got here.

Q. And did he take an X-ray picture of your arm?

A. He did.

Q. And he made an examination of your injuries?

(Testimony of Clinton J. Hutchins.)

A. He made two X-ray photographs.

Q. He made two examinations?

A. Two photographs of the injury.

Q. And he also examined your injuries?

A. No, I don't think he made any examination at all.

Q. Eh?

A. He made no examination of the injury.

Q. Well, you had to strip and so forth for him to take these photographs? A. Yes.

Q. I mean this X-ray picture? A. Yes.

Q. And did he ask you about the accident or not, did Doctor Hobdy? A. Yes. [158]

Q. Yes, that is before he took it? A. Yes.

Q. He asked you how it happened and so forth?

Mr. WARREN.—I object to all of this as immaterial, your Honor.

Mr. DAVIS.—Did he? I am asking him as a matter of fact if the doctor asked him how the accident occurred.

The COURT.—I think that is immaterial.

Mr. DAVIS.—All right, your Honor.

Q. Now, Mr. Hutchins, you say you suffer still some inconvenience from your arm?

A. Yes, it is still sore; the muscles are sore.

Q. As counsel was examining you—let me have those valuable photographs, Mr. Warren, that represent the basin.

Mr. WARREN.—Referring to exhibit 3 of deposition of Mr. Scott, are you?

Mr. DAVIS.—Yes.

(Testimony of Clinton J. Hutchins.)

Q. Were you at the time you entered the shower there and before you fell, was you facing towards this marble slab where this handle is? A. Yes.

Q. And before you fell you shoved your right hand out? A. I did.

Q. You was—how wide is this thing?

A. I should say it is about two feet and a half or so.

Q. And you were standing right in there—

A. Just to one side.

Q. Were you more to the right or to the left side?

A. About in the center.

Q. Now, these pipes here,—one is a hot-water pipe, ain't it? [159] A. I don't know.

Q. Isn't it hot water there?

Mr. WARREN.—I object to the question.

Mr. DAVIS.—You brought it out yesterday; why didn't he catch hold of the pipe?

Mr. WARREN.—The witness says he don't know whether it was hot water or not.

A. As a matter of fact, I think it is hot water but I couldn't tell it of my own knowledge. It was steaming hot in the room. A heater right here.

Mr. DAVIS.—Then there must have been hot water there?

A. I think there was.

The COURT.—Was there a door at this bath-room, a door into it?

A. You mean to the general compartment, your Honor?

Q. I know there was an opening for you to enter.

(Testimony of Clinton J. Hutchins.)

A. Into the bath compartment, yes. No door; there was a rubber curtain on one side that was not —it was pulled back but not over the entrance when I went in.

Q. So that there was not any door to open and close, just a rubber curtain across the opening through which you entered the bath? A. Yes.

Q. And that rubber curtain was pulled back and you were there and testing the water to see whether it was the right temperature?

A. It was pulled back. Yes.

Q. Well, about how far across from the door of one bath-room was it to the door of the bath-room on the opposite side? **[160]**

A. You mean the two compartments?

Q. Yes, there was an opening there, hallway or a passageway between the two—

A. Oh, I see, about two feet and a half.

Q. The passageway was about two and a half feet? A. Yes.

Q. Well, was there a light in the room?

A. In which room?

Q. In the bath-room. A. Yes, on the ceiling.

Q. On the bath-room?

A. In the ceiling of the bath-room but none in the bath compartment.

Q. You say that this happened early in the morning? A. Yes.

Q. After daylight?

A. Half-past six, I think it was, just breaking day,—it was daylight.

(Testimony of Clinton J. Hutchins.)

Q. Was the light on?

A. Well, this bath-room, I think, has not any daylight entrance. I think it is artificial light, electrical light. You see, the bath-rooms are in the center of the ship between the two tiers of staterooms. There is a companion-way on each side of this state—of this bath-room and then the shorter laterals running down—

Q. When you slipped and fell, were both feet inside of the bath-room?

A. Inside of the bath compartment, yes.

Q. You had put them both in? A. Yes.

Q. And did you put one in first and then put the other in? **[161]** A. Yes.

Q. And it was,—how long had you been in the bath-room?

A. I was just starting to step in. I was leaning over with this foot over in the bath, and I leaned over like this to get the water and test it, putting it on my arms and so forth, and then I pulled over this foot and I went down like that and threw out this arm.

Q. When you were testing the temperature of the water you had one foot in the bath-room, and then you put the other foot in? A. Yes.

Q. And just as you put it in you slipped and fell?

A. Yes.

Q. Well, now, how far inside of the bath-room was the foot that you first put in, how far inside was it?

A. You see, this bath basin was about this deep and sloping a little bit, and my heel was away from

(Testimony of Clinton J. Hutchins.)

that, how far I couldn't say. I put my foot over in here just beyond the curve, well, it curves and then slopes a little towards the center.

Mr. WARREN.—Referring to exhibit 1.

A. I put one foot over and then brought the other one over.

The COURT.—Do you remember whether you had put the other foot down or not?

A. Yes, I had put the foot down.

Q. Well, the one you brought into the bath-room last, did you put it down? A. Yes.

Q. And as you put it down you slipped? **[162]**

A. Just after. I don't think I quite had all of my weight on it. I was practically almost upright with my weight on both feet, not quite, I think I was more on the right foot than the left.

Q. Can you tell what caused you to fall?

A. Why, I attribute it to the slippery condition of the floor, the slippery condition of the bowl, that is. I don't consider the bowl and its condition one that I would want to get into again.

Q. I wasn't talking about that. What I want to find out is what caused the fall.

A. The water was running in the bowl, the steward had turned that on. The water was on the surface of the bowl, and there was,—to my knowledge there was no lurch of the ship and no movement on my part. If anything, I was leaning forward instead of upright, if there was any difference, and there was no premonition of it, it was just very quick.

(Testimony of Clinton J. Hutchins.)

Q. Well, now, in regard to—you testified about the doctor coming to see you that morning. Did he ask you how you had,—how the injury had been sustained?

A. Well, we talked it over and I told him then in the shower-bath I had fallen out.

Q. Did he ask you anything about how you had fallen when he was examining your injury, did he ask you anything about that?

A. We talked it over generally; I don't know as he asked me that direct question.

Q. Did you tell him how it happened?

A. I told him how I had fallen, that I had fallen out of the **[163]** bath and injured my shoulder and I felt very badly injured, and in fact very sure that it was broken.

Q. Did you tell him that?

A. Yes, I felt the crunch of the bones, and I told him that. I said, "Doctor, I am sure I have got a broken arm."

The COURT.—That's all.

Mr. DAVIS.—Now, Mr. Hutchins, are you sure you reached out your right hand to grab before you fell?

A. Yes.

Mr. DAVIS.—That's all.

Mr. WARREN.—I would like to ask a question here. Referring to this Claimant's Exhibit 3, there is a rubber curtain hanging on a rod, you said. Can you recall whether that curtain was in the position shown in this picture or on the other side?

(Testimony of Clinton J. Hutchins.)

A. It was in the position it is now, just about, as I remember. I don't think it was quite so—as I remember I don't think it was quite so pulled together, I think it was spread a little bit more.

Mr. WARREN.—That is all, Mr. Hutchins.

The COURT.—You are excused, Mr. Hutchins. **[164]**

Testimony of Dr. W. C. Hobdy, for Libelant.

Direct examination of Dr. W. C. HOBDY, for libellant, sworn.

Mr. DAVIS.—What is your name, please?

A. W. C. Hobdy.

Q. Are you a doctor of medicine holding a diploma and licensed to practice medicine and surgery in the Territory of Hawaii? A. I am.

Q. How long have you been practicing here, Doctor? A. Seven years.

Mr. WARREN.—I will admit Doctor Hobdy's qualifications.

Mr. DAVIS.—All right.

The COURT.—His qualifications are admitted.

Mr. DAVIS.—Did you receive a visit from Mr. C. J. Hutchins professionally, and if so, when?

A. The exact date I cannot state, sir, but it was some time in May.

Q. Was it in March, Doctor? Excuse me for leading him.

A. Well, it was at the time of the Shrine parade. That is as near as I can arrange it. I saw him at that time. The date I had not the time to look up

(Testimony of Dr. W. C. Hobdy.)

as I was called on the phone to come over here this morning.

The COURT.—That was the 3d of April?

Mr. DAVIS.—Anyhow, Mr. Hutchins called on you professionally at that time?

A. Yes.

Mr. DAVIS.—Will you admit, Mr. Warren, that it was in the **[165]** month of April, because the doctor can verify that by his books.

A. I can find it in the books all right.

Mr. WARREN.—I don't make any admissions there.

Mr. DAVIS.—All right, Doctor, you will have to get your memorandum-book and verify these dates, eh? A. Yes.

Q. Anyway, it was in the year 1916?

A. Yes, last year.

Q. And you think in the month of March or April?

A. Yes.

Q. You will have to verify those dates afterwards. Now, did you make an examination of Mr. Hutchins' arm and shoulder?

A. Not extensively. I attempted to get a history of the injury. Mr. Hutchins was referred to me by Doctor C. B. Wood primarily for the purpose of having an X-ray examination made of his injured shoulder.

Q. Yes.

A. In attempting to find out how the shoulder was injured, I got the history of the accident so that I

(Testimony of Dr. W. C. Hobdy.)

could tell something about what part of the arm or shoulder to photograph.

Q. Exactly.

A. It was painful, very painful, and I did not make any extended examination of the shoulder itself or attempt to have him move it at all. I simply got his clothes off with as little trouble as possible, and I looked over this swollen arm and got the history of the case and then I made an X-ray photograph.

Q. From your superficial examination there, Doctor, did you—is it your opinion that he had suffered a fracture of the [166] arm?

A. I thought there was in all probability a fracture or a severe injury of the shoulder, or the head of the arm bone, the humerus.

Q. Then you made an X-ray picture; what did you find?

A. I found a fracture of the neck of the humerus, which had not only been broken but had been driven into the head of the bone. It is what we call an impacted fracture.

Q. Is that a serious fracture?

A. Any fracture of the shoulder joint, around the shoulder joint is a serious fracture, yes, sir.

Q. Was that one? A. Yes.

Q. Now, Doctor, you haven't got that X-ray plate, have you? A. Not with me; no, sir.

Q. But you have that in your office?

A. Yes; it is at my office.

Q. Could you file it here in the court? A. Yes.

Mr. DAVIS.—All right. Now, Mr. Warren, do

(Testimony of Dr. W. C. Hobdy.)

you want us to bring it here and identify it, or do you wish us to file it?

Mr. WARREN.—I don't think I will make any admissions.

Mr. DAVIS.—I think you will have to go and bring that plate and verify it, that X-ray plate, Doctor. Counsel won't admit, I am sorry, so we will have to put it in.

Q. Now, Doctor, from the history that—from what Mr. Hutchins said to you about how this accident happened, and so forth, if you had been called in the first instance, he was injured on the 18th of February, what treatment would you [167] have given, or what treatment in your opinion would have been scientific and skillful?

Mr. WARREN.—I object to the question. In the first place, it is incompetent and would be based on hearsay statements made to him by Mr. Hutchins, and that it is absolutely outside of the case. That Doctor Hobdy undertook to make X-ray pictures I don't think any opinion he would state based on the history or statement made of the case to him by a patient would be admissible.

Mr. DAVIS.—In the first place, Doctor Hobdy got the history of what took place in a certain place and made an examination of the shoulder, and in the third place he took an X-ray picture of it and he knew all about it. The idea of saying he can't give an opinion of what treatment ought to have been given,—why, the thing is absurd. He ascertained just what the injury was from the patient first hand as to how the

(Testimony of Dr. W. C. Hobdy.)

accident happened, and he made an examination there, and he is a surgeon whose qualifications are admitted, and he was sent to him by the physician who tended Mr. Hutchins.

The COURT.—I understand that he is entitled to give his opinion, but Mr. Warren raises the objection that it would be predicated on what Mr. Hutchins told him.

Mr. DAVIS.—No, I am predicating it on all the X-ray pictures and everything.

The COURT.—I think in the form it is in the question is objectionable. I think he is entitled to give his opinion as to what treatment would be proper for the injury immediately after it happened from what he found to be the [168] injury.

Mr. DAVIS.—All right, I will change the form of the question.

Q. Then, what in your opinion would have been the proper treatment of a wound which you ascertained by means of an X-ray and by your examination of it?

Mr. WARREN.—I object to that question, may it please the Court, on the ground that it assumes that the condition as afterwards ascertained and determined by the X-ray was known or could have been known or probably should have been known to the physician making the initial examination.

The COURT.—Overrule the objection.

Mr. WARREN.—An exception noted, your Honor.

A. In just two words, absolute immobilization, keep the arm perfectly still.

(Testimony of Dr. W. C. Hobdy.)

Mr. DAVIS.—Eliminating the X-ray from the examination you made, what would be a proper treatment?

Mr. WARREN.—I object to that as hearsay.

Mr. DAVIS.—Never mind about the hearsay; what would be the proper treatment?

Mr. WARREN.—I object to any testimony that the doctor might give—

The COURT.—One moment, gentlemen. Doctor, did you testify that you made an examination for yourself having an X-ray, or that you made an examination for yourself other than the X-ray?

A. An inspection. I did not attempt to move the arm at all. I did not attempt to have the patient put the arm through any motions at all, that is what I testified to, that I [169] inspected it, and then after that by palpation. I tried to ascertain if there was anything that I could feel there, this swelling, that would tell me exactly where to focus my X-ray. Further than that I did not go.

Q. To see what was the portion to photograph?

A. Yes.

The COURT.—I think the testimony is admissible.

Mr. DAVIS.—All right; then what treatment would you have—

A. Absolutely the same, sir; I can answer exactly in the same two words, absolute immobilization, keep the arm perfectly still.

Mr. DAVIS.—Take the witness.

Cross-examination of Dr. W. C. HOBDY.

Mr. WARREN.—Your answer, Doctor, in each of

(Testimony of Dr. W. C. Hobdy.)

these cases where you have said absolute immobilization assumes that the condition which was disclosed by the X-ray was known to the physician at the time of the injury?

A. Yes. In treating it by trying to keep that arm absolutely still or nearly as absolutely still as would be possible, I would do it on the assumption on a tentative diagnosis that he had a fracture. That would be based on the swelling, the loss of function and the suffering that this patient had, not enough to make me absolutely sure that he had a fracture but until I could rule that he had I would treat it safely from his standpoint as a fracture [170] and keep it still so that he wouldn't do himself any more damage or disturb things any more than possible.

Q. There would not be swelling within thirty minutes after the injury?

A. Not—do you mean in a fracture?

Q. Yes.

A. Quite frequently, yes, it would begin to show.

Q. Until you took the X-ray you did not know except from hearsay what was the matter?

A. I had a very close opinion as to what was the matter from hearsay, yes, that is, from the history I got from the patient and that is what I base—it is part of the function of any diagnosis a doctor makes, and then what his patient tells him.

Q. And if the patient had made no disclosure and you had had no history given you from other sources, your examination or inspection of the shoulder in your office at that time would not have disclosed to

(Testimony of Dr. W. C. Hobdy.)

you what was the matter?

A. If I did not know anything about how this accident had occurred, if this man had been deaf and dumb and simply walked into my office with a swollen shoulder and could give me no history at all as to the accident I wouldn't have known—I wouldn't have been sure at all in my mind, Mr. Warren, as to what had happened, no, sir, I wouldn't at all.

Mr. WARREN.—That is all.

The COURT.—I want to ask you a question, Doctor Hobdy. You did make an examination of him at the time you testified?

A. Yes. [171]

Q. And you did learn what was the injury and what injury he was suffering from at that time?

A. Yes.

Q. Now, do you know, can you tell from the injury itself what symptoms were manifested at once or in the course of thirty minutes after—what symptoms necessarily manifest themselves say thirty minutes after the injury was sustained, what was the effect of it?

A. Yes. First of all, pain. Second and most important, the loss of limitation or function.

Q. Yes, what do you mean by that?

A. Inability to move the arm about.

Q. Yes.

A. Third, that within thirty minutes after in all likelihood a swelling in that seat. Had it been a little lower down it would have been quite visible thirty minutes after, but it might have manifested itself

(Testimony of Dr. W. C. Hobdy.)

only as an increased tenseness of the tissues there because there is a large muscle over that which would have obscured it somewhat, but there are three things which this gentleman undoubtedly did feel, first, pain. He could tell that he couldn't use his arm, he didn't know it was broken, perhaps, but there was the pain that attempted motion gave it, and third, it would begin to swell.

Q. Now, I want to ask you whether or not a competent surgeon should have been able from the symptoms that necessarily manifest themselves, say thirty minutes after an injury, to have diagnosed what was the matter.

A. I think any competent man would have had just a close idea— [172]

Q. Knowing the history of the case which you of course learned from the patient? A. Yes.

Q. That is the first thing a doctor does?

A. The first thing.

Q. The first thing a doctor does is to learn the history of the case from the patient? A. Yes.

Q. And then examines the injury? A. Yes.

Q. From the history of the case learned from the patient and from the symptoms that manifest themselves, could you tell whether or not a competent surgeon should have known that there was probably a fracture? A. Yes.

Mr. WARREN.—Just a moment; you answered so quickly, and I want to have my record show my objection to that as based on hearsay to such an extent that the question is improper.

(Testimony of Dr. W. C. Hobdy.)

The COURT.—All right; as far as that is concerned it is the duty of a doctor—of course, I didn't let Doctor Hobdy testify as to what his opinion was from what Mr. Hutchins told him, but it is natural that a surgeon would get the history from the patient. If he didn't he neglected his duty not to do it?

A. Absolutely, yes, sir.

Q. It is supposed that you learned how the injury occurred from the patient. It is an issue in this case as to the competency of the ship's surgeon, and I want to know whether a competent surgeon should have known from the symptoms which were manifested, which must necessarily [173] have manifested themselves within thirty minutes after the injury and also from the symptoms of the case as learned from the patient. I allow you an exception.

A. I think so; yes, I think so. I mean by that that we have the history and these three symptoms that would stand out. Going into any good surgeon in this town, any good surgeon in this town, pick any one of them, and the man would have immediately made a diagnosis tentative of fracture. I wouldn't say that I could say the arm bone itself was broken, but this collar-bone might have been broken or the cap that goes over here, with a plunge like that. I think the idea of fracture would enter into any competent surgeon's mind at once.

Q. What is the treatment for any of these things?

A. Following that, the treatment is a little bit different. An examination made immediately would have told plainly whether or not the collar-bone was

(Testimony of Dr. W. C. Hobdy.)

broken, but you can rule that out because it is right under the skin and can be seen it was not broken. This bone that comes over here, the shoulder-cap, or if you want the name for it, the olecranon. You can also tell about that. Now, you rule out these two and then the chances are all in favor, and the deduction would be that the injury was to the neck of the arm bone or humerus. That would be the inference. You get at these things by ruling out.

Q. Now, was there anything in the proper treatment for the injury that he really sustained that would be improper in treating a bruise?

A. I don't know that I understand your Honor's question. [174]

Q. To properly treat the injury that was sustained, properly treat it, give it the proper treatment immediately after the injury that it should have received, the immobilization, was there anything in doing that that would have been improper in treating a bruise?

A. No, sir, but if you put it the other way, yes. That is, was there anything improper in the treatment of a bruise if it were a fracture, yes, but not that way. You see what I mean?

Q. Yes, I understand.

A. For the treatment—if he had treated it as a bruise, a bruise as a fracture, there is no great harm done to the patient—no, I mean if he treats,—yes, if he treats a fracture as a bruise then there may be harm done to the patient.

Q. But no harm done to the patient in treating a bruise as a fracture?

(Testimony of Dr. W. C. Hobdy.)

A. No. In other words, if I make a mistake in Hutchins' case and I say, look here, I think you have got a fracture and I am going to put the arm up and keep it absolutely as still as possible, if it was only a bruise I have done the patient no harm, that is what I mean. On the other hand, if I say you have only got a bruise, the thing for you to do is to work the arm and have it massaged also to give it—to get the soreness and stiffness out of the muscle that has been bruised in this accident that has happened to you, then I am doing the wrong thing.

Mr. WARREN.—I want to ask you, Doctor, in one of your answers to the Court's question as to the proper treatment [175] if the competency of a physician in giving the treatment rests upon your own knowledge of the case as stated to you by Mr. Hutchins, in other words, it depends upon the history that was stated to you and you must assume that that history is the same?

A. Would you mind stating that again?

Q. Your answers to his Honor's questions depend upon you having historical knowledge of the case?

A. Yes. I could not have made—had he walked in and simply made a motion and let it go at that I could not have made a diagnosis of fracture.

Q. So that your answers as to whether or not the treatment was proper or improper of the doctor's work, whether it was competent or incompetent depends upon your having acquired knowledge of that case?

A. Yes. When I said any surgeon I meant, Mr.

(Testimony of Dr. W. C. Hobdy.)

Warren, provided he had the three symptoms. I think—

Mr. WARREN.—That is all. I move your Honor to strike the answers of the witness to these several questions, that they are founded in part on hearsay.

The COURT.—Overrule the motion to strike.

Mr. DAVIS.—I would ask the Court to take a recess until the doctor goes and gets those plates.

The COURT.—Take a recess for five minutes.

AFTER RECESS.

Mr. DAVIS.—I ask that the deposition of Lefebre, and the depositions of John B. Morris and W. P. Metzler, be now opened by the clerk and read.

Mr. WARREN.—I consent to the depositions being opened by [176] the clerk but object to them being read or heard at this time.

Mr. DAVIS.—On what grounds?

Mr. WARREN.—Except so far as the depositions for libellant are concerned.

Mr. DAVIS.—Then all we want is the deposition of the witness for the libellant, Lefebre, and I ask that it be read. Will I read it or will the clerk? I will read it.

(Mr. Davis reads direct examination of deposition of Lefebre.)

Mr. WARREN.—I ask the answer be stricken out as hearsay.

The COURT.—Yes.

Mr. WARREN.—The handle on the wall, I move it be stricken, referred to page 4 of the deposition of Lefebre, the answer of the witness, the third answer

(Testimony of Dr. W. C. Hobdy.)

of the witness on that page.

Mr. DAVIS.—No objection was raised at the time of taking the deposition.

The COURT.—Objected to on the grounds of hearsay; it will be stricken out.

Mr. WARREN.—I move to strike the entire answer as hearsay and opinion, being the fourth answer on page 4.

The COURT.—The answer is stricken.

Mr. WARREN.—I will read the cross-examination. (Reads.) [177]

Testimony of Dr. G. F. Straub, for Libelant.

Direct examination of Dr. G. F. STRAUB, for libellant, sworn.

Mr. DAVIS.—What is your name?

A. George F. Straub.

Q. Are you a doctor of medicine holding a diploma and licensed to practice medicine and surgery in the Territory of Hawaii? A. I am.

Mr. WARREN.—His qualifications are admitted.

Mr. DAVIS.—All right.

Q. In the month of February, did Mr. C. J. Hutchins call upon you in connection with any—

A. February, 1916, on the 11th it was. I looked it up in my book.

Q. Did you make an examination of his injuries?

A. I took an X-ray picture. He was brought in, or sent in by Doctor Wood; he was a patient of Doctor Wood's, and he was sent in with the request to take an X-ray picture, and I took an X-ray picture

(Testimony of Dr. G. F. Straub.)

and found an impacted fracture of the right upper end of the humerus.

Q. Now, Doctor Straub, will you kindly look at this plate. Is that the plate you took? A. Yes.

Mr. WARREN.—That is the plate marked for identification in this case as Libellant's Exhibit "A" for identification?

Mr. DAVIS.—Yes. Now, your Honor, I ask that this be received in evidence and marked Libellant's Exhibit "A." [178]

Mr. WARREN.—No objection.

Mr. DAVIS.—Now, Doctor Straub, you made some examination, of course Mr. Hutchins had to strip, did he?

A. Yes, sir.

Q. And did you make some examination of that injury?

A. Well, I tried. I moved the arm and I felt some symptoms which pointed to a fracture, and I also found an inability of the patient to moving the arm, he couldn't elevate it, due to a severe injury to the upper part there.

Q. What would you say as to whether or not he was suffering pain, in your opinion?

A. I know he had pain at that time.

Q. Now, from your examination made at that time, this injury happening on the 18th of February, what treatment would you—what would have been the proper treatment of that injury after it happened on that date, in your opinion?

Mr. WARREN.—Just a minute. I want to ob-

(Testimony of Dr. G. F. Straub.)

ject there. There is no proper foundation laid for the question. It does not appear upon what the answer could be based except as disclosed by the X-ray picture.

Mr. DAVIS.—Your Honor admitted the testimony of Doctor Wood—I mean of Doctor Hobdy, and Doctor Straub says he moved the arm and made an examination.

The COURT.—He does not ask what he heard from Doctor Hobdy. It is supposed his knowledge is based on what the injuries are and what the treatment should have been after receiving the injuries.

Mr. DAVIS.—Yes, your Honor.

The COURT.—Overrule the objection. [179]

Mr. DAVIS.—Will you kindly state, Doctor Straub, what treatment?

A. If I had to treat the case I would have immobilized the arm.

Q. You mean by that what, in technical terms?

A. To prevent the arm from being moved, to be absolutely at rest.

Q. What would you have done in that connection, Doctor Straub?

A. I would have—it all depends in which position the arm would have been the most comfortable. Of course it is hard to fix a standard rule,—

Mr. WARREN.—Just a moment; I am objecting and want to be heard before you finish your answer. It is not competent evidence what the witness on the stand would do or would have done in a particular case.

(Testimony of Dr. G. F. Straub.)

The COURT.—Sustained.

Mr. DAVIS.—In your opinion, I am asking you what would have been the proper treatment.

The COURT.—I think that is all right.

Mr. WARREN.—Same objection, your Honor.

The COURT.—I think it is admissible.

Mr. DAVIS.—Go ahead, Doctor.

A. I say I would have immobilized it, either have put the arm in a simple sling and fastened it with bandages, or would have put a triangle of wood which is a much favored treatment in these cases, and put it in the most comfortable position. There was not much discoloration there, and I believe it is just mainly a matter of immobilizing an arm in these cases than trying to set it or manipulate [180] it greatly.

Q. From the examination you made, Doctor Straub, and from what you saw there before you took the X-ray picture, did you have any opinion as to whether there was a fracture there or not?

A. I remember at that time I could feel a slight crepitation which would make me suspect a fracture. Of course there was no absolute evidence.

Q. Would you consider that the physician who made an examination of that arm after the accident happened and a statement as to how the accident happened and so forth by a patient, if he should treat that as a bruise would you consider him a competent physician?

Mr. WARREN.—I object to that question, your

(Testimony of Dr. G. F. Straub.)

Honor, as being ambiguous and calling for the opinion of the witness—

The COURT.—I sustain the objection on that point.

Mr. DAVIS.—In your opinion, from your examination, Doctor Straub, that you made of Mr. Hutchins' arm, what in your opinion would have been—you say the proper treatment would have been immobilization?

A. Yes, after knowing of course that included the knowledge I had after taking the X-ray photograph.

Q. Sure, it includes it all, but from the symptoms exhibited there before you took the X-ray picture, I asked you if you formed an opinion as to whether or not you suspected a fracture there.

A. I did suspicion there was.

Q. Exactly, and having that suspicion you would have applied that treatment, would you? [181]

A. I would have; yes.

Q. As any competent physician would have done?

Mr. WARREN.—I object to the question as calling for an opinion.

Mr. DAVIS.—I submit it is a perfectly proper question.

The COURT.—I don't think so, objection sustained.

Mr. DAVIS.—On what grounds, your Honor?

The COURT.—What any competent physician would have done.

Mr. DAVIS.—That's the only way to put it, it appears to me.

(Testimony of Dr. G. F. Straub.)

Q. Now, if a physician had been called in directly after that accident occurred and a history or a statement of how the accident occurred had been communicated to him, and if he made an examination, what treatment should he have given Mr. Hutchins in your opinion?

Mr. WARREN.—I object to the question on the grounds that it is incompetent. It assumes the history is stated, which is not brought to the knowledge of this witness, and he cannot assume or pass upon the competency of the treatment not knowing what history was stated to the doctor at the time.

Mr. DAVIS.—Mr. Hutchins stated that he stated fully to the ship's doctor just exactly what happened, and it is based on that foundation. An objection of that kind is absurd. In fact, in all the testimony in this case I have laid the foundation for it. Mr. Hutchins stated it fully and this doctor knew all about it, knew how the accident happened, was there a few minutes afterwards, made an examination and so on. What stronger foundation can anybody lay for it? I am asking Doctor Straub for an expert opinion.

The COURT.—I will allow the testimony in. [182]

Mr. DAVIS.—Kindly answer the question, Doctor Straub.

A. Will you repeat the question, please?

Mr. WARREN.—Right here, before going further, it might be just as well, your Honor, to mention the fact that at different times exceptions have

(Testimony of Dr. G. F. Straub.)

been taken to your Honor's rulings and at other times not.

(Last question read by the reporter.)

A. Pending any further examination which would have completed the picture, I would have immobilized the arm.

Mr. DAVIS.—And if the injury had simply been a bruise?

A. I would have immobilized the arm.

Q. Yes.

A. Because I would have to have the suspicion, and such a suspicion is justified in looking over the records in such cases all over the world, that there is very often a fracture perhaps even of a slight nature which will be aggravated by being moved afterwards, and that such fractures happen even in cases where it is not suspected at all, so one can't be suspecting enough in these cases and give the patient the benefit of the doubt until the X-ray picture is taken and until the case is cleared up.

Q. And would immobilization if it had only simply been a bruise, would immobilization done any harm?

A. It wouldn't have done him any harm under any conditions.

Q. But would you consider that treating that as a bruise and not immobilizing it, would that be liable to do harm?

Mr. WARREN.—I object to the question, no proper foundation, and it assumes matters in the knowledge of the witness not included in the question. [183]

(Testimony of Dr. G. F. Straub.)

Mr. DAVIS.—I simply ask if there was a simple bruise there, would immobilization have done any harm.

The COURT.—Objection overruled.

A. No, it would not.

Mr. DAVIS.—In treating that fracture simply as a bruise, would that do harm to not immobilize it?

A. It might.

Q. Was it skilful treatment to allow that arm to remain just as it was without bandaging it or without immobilizing it, from the 18th of February until the vessel arrived here on the 21st?

Mr. WARREN.—Object to the question on the ground that it has no proper foundation and calls for the opinion of the witness upon matters not stated or within his knowledge.

The COURT.—He has given his opinion, I think, as far *as can* give it, Mr. Davis; he testified to what treatment was proper.

Mr. DAVIS.—He could state in his opinion,—Mr. Hutchins testified that nothing was done to his arm, no kind of a bandage or anything from the time of the accident, by the doctor.

Q. I will put it in another form. Would you consider a physician a competent physician who would have examined the arm and who had been given an account of the accident, who would simply do nothing to immobilize it towards remedying the arm in any way, would you consider him a competent physician?

Mr. WARREN.—I wish to note the objection that

(Testimony of Dr. G. F. Straub.)

the question [184] assumes matters not within the knowledge of the witness and not stated in the question and would be an opinion, without any foundation.

The COURT.—I don't think he can give his opinion on the competency of the physician in that way. The neglect may have been due not only to incompetency but to negligence.

Mr. DAVIS.—Would you consider a man a competent physician who would allow the arm to remain just as it was after the accident happened without doing anything, for a period of three days, would you consider that skilful treatment?

Mr. WARREN.—Same objection, if your Honor please. The facts and circumstances are not within the knowledge of the witness and are not stated in the question.

Mr. DAVIS.—Yes, I have stated them. He knows the accident happened, and I stated now, would he consider that skilful treatment if the arm was allowed to remain in the same condition it was after the accident for a period of three days after it happened, that would be from the 18th to the 21st.

The COURT.—I will allow it to go in and overrule the objection. Answer the question.

A. You mean to say whether it was skilful treatment?

Mr. DAVIS.—Yes, was that skilful treatment?

A. I don't see where the treatment comes in, there was no treatment at all.

(Testimony of Dr. G. F. Straub.)

Q. Well, if he done nothing, would that *he* the duty—well?

A. It is no treatment, but it is the next wisest thing to do. [185] If you don't want to do anything at all, better leave it alone.

Q. Wasn't it his duty to do something under these circumstances?

Mr. WARREN.—Object to the question as leading.

The COURT.—That is kind of leading.

Mr. DAVIS.—Do you consider a man a competent physician who would do the like of that?

Mr. WARREN.—I object to that as having no proper foundation.

Mr. DAVIS.—Well, you consider then doing nothing skilful treatment?

A. If a man didn't know exactly the nature of that injury—

Q. Yes?

A. —it would show skill on his part to refrain from anything that might do harm.

Q. Yes?

A. In so far as even manipulation or forced moving of that arm could have done still more harm than not doing anything at all.

Q. What would have been skilful treatment under such circumstances?

A. That would mean what I have indicated, immobilization.

Q. Exactly. A. That is the best treatment.

Mr. DAVIS.—All right; that is all, Doctor.

(Testimony of Dr. G. F. Straub.)

Cross-examination of Dr. G. F. STRAUB.

Mr. WARREN.—The only thing I want to ask you Doctor, is, you [186] said the 11th of February?

A. I saw the case on the 11th of February, I think it was the 11th—or the 21st, I got a little memorandum here, I can refresh my mind. No, I haven't put it down.

Q. Would the date on the plate settle the question?

A. I think so.

Q. That is February 21st.

A. I think that is the date. We generally write the date on the plate, it was either the 11th or the 21st.

Mr. DAVIS.—Would the date on the plate settle it?

A. Yes.

Q. I will just show you the plate so as to make sure of that.

The COURT.—Well, Mr. Warren said it was the 21st.

Mr. DAVIS.—21st of February, 1916; that's the date?

A. Yes.

The COURT.—That is all, Doctor.

Mr. DAVIS.—We will recall Doctor Hobdy. [187]

Testimony of Dr. W. C. Hobdy, for Libelant (Recalled).

Direct examination of Dr. W. C. HOBDY, recalled.

Mr. DAVIS.—Now, Doctor Hobdy, have you the plate that you took?

A. Yes.

Q. Is that it? A. Yes, I have two.

Q. Yes, you have two there.

A. There was some question about the date on which this work was done, too.

Q. Yes, when was it done, Doctor?

A. April 2d.

Q. What year? A. 1916.

Q. These are the two plates that you made of the libellant, Mr. Clinton J. Hutchins, in your office in the city and county of Honolulu? A. Yes.

Mr. DAVIS.—We offer these in evidence and ask that they be marked Libellant's Exhibits "B" and "C."

Mr. WARREN.—No objection.

The COURT.—All right. If that is all you wish to ask the Doctor, he is excused.

Mr. DAVIS.—That is all; thank you, Doctor.

Mr. WARREN.—No questions, your Honor.

The COURT.—You are excused, Doctor. Adjourn court until Monday morning, February 19, 1917, at 9:00 A. M. [188]

In the United States District Court, in and for the Territory of Hawaii.

CLINTON J. HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellees.

Honolulu, H. T., February 19, 1917, 9:00 A. M.

The COURT.—Proceed, gentlemen.

Mr. WARREN.—I will resume the reading of the cross-examination of the witness Lefebre, at the middle of page 7. (Reads.)

Mr. DAVIS.—Now, I will read the redirect examination of Lefebre. (Reads.)

Mr. Warren reads recross-examination of witness Lefebre.

Mr. DAVIS.—I understand that Doctor Macadory, the ship's doctor on the "Great Northern," is now in the Territory of Hawaii, and it is up to the libellees to get him.

The COURT.—This rule with reference to the duty of the ship and its physician, it is rather new to me, and I would like you gentlemen to brief it and file your briefs on [189] that. If I understand Mr. Warren, he maintains that a ship is liable only in case it employed an incompetent physician and were negligent in doing so and injury resulted

from the incompetence of the physician, and in case the company was negligent in going into his qualifications. As far as the proof goes up to date the doctors have testified that the symptoms that developed wouldn't show from this injury in a short time after—that from the symptoms that would naturally exhibit themselves immediately after this injury, that a competent physician should have known that there was a probable fracture and should have treated it for a fracture. Now, the only thing to be proved as to the knowledge of the shipping company is as to their negligence. Of course the testimony of these doctors would tend very strongly to prove, to put it mildly, that the physician, Doctor Macadory, was not competent otherwise he would have treated this case in the way in which they say a competent physician would have treated it, but where is the proof as to the knowledge of the company as to negligence, Mr. Davis?

Mr. DAVIS.—The mere fact that they employed this physician shifts the burden of proof, and further, your Honor, it also appears that the master of that vessel in whose care the passengers were did nothing, not even inquire about the passenger, and the same duty is imposed by law upon the master of that steamship as it should be toward other seamen, and the highest evidence of the incompetency in there is he gave the man two pellets. He came in the [190] next morning and did nothing further. There can be no stronger evidence than that coupled with the fact that the captain of the vessel did abso-

lutely nothing. Now, your Honor has asked me about the duty. It is imposed by law upon them to carry a competent physician and surgeon. The Federal statute, 724, is before your Honor, Act of August 2, 1882, entitled an act to regulate the carriage of passengers by sea.

The COURT.—Have you gentlemen any cases in which that act has been considered, showing what the duty imposed on a ship is, where an action has been brought involving the consideration of the act, whether or not the ship was liable in case a physician were incompetent without any proof as to knowledge on the part of the company?

Mr. DAVIS.—In 154 Massachusetts, 272, the act is so construed in O'Brien versus The Cunard Steamship Company, by the Supreme Court of Massachusetts.

Mr. WARREN.—I will be pleased to file a memoranda of authorities on that point. I have a number that will dispose of the matter.

I would suggest, if there is no objection, I am perfectly agreeable to saving this time by reading some of the libellee's depositions. I will first read the deposition of Mr. Walter A. Scott, for the claimant, taken at San Francisco, direct examination by Mr. Carey. (Reads direct examination.)

Mr. Davis reads cross-examination of Walter A. Scott.

Mr. WARREN.—The next deposition I would like to read is that of H. K. Relph, beginning on page 20, direct examination [191] by Mr. Carey.

(Testimony of H. E. Wescott.)

Mr. DAVIS.—I will read the cross-examination on page 24. Let his Honor take the testimony and read it by himself and consider it. Let us consider it as read. Your Honor will have to read it anyway.

Mr. WARREN.—Except, your Honor, there may be objections to be made and ruled upon. Perhaps it would be a good idea for us to go over these Tuesday and if we find there are objections to be made they can be specifically pointed out. Your Honor can read the testimony.

The COURT.—I can just consider that objections are made in this testimony such as you see fit to point out. Counsel shall have the right to make specific objection to any portion of the testimony that is in.

Mr. WARREN.—It being understood, your Honor, that thus far I have not offered these depositions but will offer certain of them where I do not produce the witnesses in person.

Mr. DAVIS.—To which we offer no objection.

Testimony of H. E. Wescott, for Libelant.

Direct examination of H. E. WESCOTT, for libelant, sworn.

Mr. DAVIS.—Mr. Wescott, what is your name, please?

A. Herbert Edward Wescott.

Q. Where do you reside, Mr. Wescott?

A. In Honolulu. **[192]**

Q. What is your business?

A. Purchasing agent for the city and county.

(Testimony of H. E. Wescott.)

Q. For the city and county of Honolulu?

A. Honolulu.

Q. And how long have you resided in the Territory of Hawaii?

A. Four years the first of this year.

Q. Do you know the steamship "Great Northern"? A. Yes, sir.

Q. Was you a passenger on her at any time, and if so, when?

A. No, sir; I have not been a passenger.

Q. Did you go aboard of this steamer "Great Northern"?

A. Yes, while she was here I went on board at different times.

Q. When?

A. As near as I remember, the latter part of March last year.

Q. March of 1916? A. March, 1916; yes.

Q. Did you have occasion to visit any of the bathrooms on board of the steamship "Great Northern"?

A. Well, I was in company with Mr. Bicknell, the city and county auditor. We paid a visit to these showers and all the rooms open on that main deck, the deck on which the gang-plank is.

Q. Which deck is that—do you know which deck that is?

A. I don't know what they call it, but I could go right to it, the deck just above the dining-room.

Q. C Deck. Well, you don't know; the deck above the dining-room?

(Testimony of H. E. Wescott.)

A. Yes, the stairs led down from that to the dining-room.

Q. Did you have occasion to visit the shower-baths there? A. Well, we did visit them; yes. **[193]**

Q. How many of these baths did you visit, Mr. Wescott?

A. Why, we went into every bath shower on the ship—to every shower on that deck, I mean. We walked down one alley and up the other. As I remember, it is about amidships; it has an alley on both sides of the entrance.

Q. You visited the bath amidships on that deck?

A. Yes.

Q. Just look at that photograph and tell me do you notice anything absent in the bath you visited that is on there?

Mr. WARREN.—You are referring now to Plaintiff's Exhibit 1, attached to Mr. Scott's deposition.

A. I notice very prominently here a handle that was not there at the time. That is one reason we visited these. We happened to know of—

Mr. WARREN.—I object to a statement of the reasons.

Mr. DAVIS.—Anyway, you visited it?

A. Yes.

Q. And from information received, you took the opportunity and pains to see whether or not that handle was in that particular bath-room?

A. We did; yes.

Q. Was it there?

A. It wasn't there at that time.

(Testimony of H. E. Wescott.)

Q. When was this?

A. That was March, 1916, the latter part of March when the vessel was here in Honolulu.

Q. When the vessel was here in Honolulu?

A. Yes.

Mr. DAVIS.—That's all. **[194]**

Cross-examination of H. E. WESCOTT.

Mr. WARREN.—In saying that this handle was not there at that time, and pointing to this photograph you have, put your finger on the handle on the center of the back well of that shower compartment visible just by the edge of the wall.

A. Yes, sir, that handle that is shown there.

Q. Does that more plainly appear in the center of Plaintiff's Exhibit 2?

A. Yes, that looks like the same shower, but the handle appears in the center of the slab.

Q. Now, you say it was not in that particular shower. Do you know which particular shower this is a photograph of? A. I do not.

Q. Did you go to look at that bath-room at the request of Mr. Hutchins or at his instance?

A. No, sir, I knew of his accident, but it was just an accident that we visited the boat on this day. After lunch Mr. Bicknell and I walked down the street and saw the "Great Northern" at her dock, and I suggested,—as I had never been aboard the boat I suggested we take a walk down and look over the boat. Mr. Bicknell hadn't seen it and we both went down and looked into these things, to see the condition of it.

(Testimony of H. E. Wescott.)

Q. Who is this other man you mention?

A. Mr. Bicknell, the auditor for the city and county. [195]

Q. James Bicknell? A. James Bicknell, yes.

Q. And he went with you through the rooms?

A. He and I went together; yes.

Q. Can you give that date any more particularly—was it the first or the second return of the vessel?

A. As I remember it, it was the third trip here. She came here during the carnival the first trip, as I remember, and made one trip to Honolulu and back to the coast in the interim, that is, there was one trip I hadn't seen the boat. It was the third trip here, that would bring it about the latter part of March or the first of April, as near as I can remember, without looking at the dates.

Mr. WARREN.—That is all.

Redirect Examination of H. E. WESCOTT.

Mr. DAVIS.—Now, then, can you locate that particular bath-room where you say the handle wasn't more definitely?

A. I could go to it, yes.

Mr. DAVIS.—If there is any doubt about this being the particular bath-room where Mr. Hutchins entered, I would ask the Court that we go down and view it and have Mr. Wescott point it out and then I will put Mr. Hutchins on to show that is the bath-room.

The COURT.—I will order that the witness, with Mr. Warren and yourself and Mr. Hutchins, go and locate the particular bath-room where you say there

(Testimony of H. E. Wescott.)

was not any handle in just **[196]** now, but you can do that any time to-day, and perhaps I will go.

Mr. WARREN.—I would like to have your Honor go because in connection with the depositions there will be more testimony about the bath-room.

Mr. DAVIS.—Would your Honor say half-past one, or one o'clock?

The COURT.—Say about three-thirty.

Mr. DAVIS.—Yes.

Mr. WARREN.—I wish to ask him a question. Did you examine more than one of the bath-rooms?

A. Sir?

Q. Did you examine more than one of the bath-rooms?

A. Why, yes, sir; there were other baths as I remember—

Q. Shower-bath rooms?

A. There was only one shower-bath I saw, that is just amidships.

Q. Well, did you examine the one right opposite it?

A. Well, this was in the center of the boat; there is a door leading either way into the—

Q. You say this was on the deck immediately above the dining-room? A. Yes.

Q. You don't know whether that is C deck or what deck?

A. I don't know the name for it, no, sir, but it is the same deck the purser's office is on.

Q. Did you examine any other shower bath-room in which you say there was no—

(Testimony of H. E. Wescott.)

A. I looked into two rooms where there were tubs.

Q. As I understand you, this handle, I will call it, that is on the marble slab in the rear of the bath-room as shown [197] by the photographs you have, and Plaintiff's Exhibit 2—Libellant's Exhibit 2 was not on the rear of that slab when you examined it?

A. No, sir; the shower we looked at there was absolutely nothing, and these looked pretty slippery here and we remarked at the time—

Q. Never mind that. There was not any handle down on the back of this place?

A. No, sir, no handle.

Q. This exhibit here, referring to exhibit No. 3, showing the same, was it there then, was that there —was there any handle on there, the rear side of it or on the side of it, either side of it?

A. No, sir, we saw no handle.

Q. There was no handle there of any kind?

A. No, sir.

Q. Well, did these pipes come down?

A. Yes, this pipe was there, hot and cold water.

Q. This rod there?

A. Well, I didn't notice that, but I know there was a curtain hanging there.

Q. But there was no hold of that kind there anywhere either on the back or the side or over here?

A. No, sir, there was no hold.

Q. Well, if I understand you, you examined it for the purpose of ascertaining whether there was, you looked at it for the purpose of ascertaining whether

(Testimony of H. E. Wescott.)

there was anything of that kind there, didn't you?

A. Well, we were not looking for handles exactly. We was [198] wondering how a person could take a shower or even a bath in these rooms without some handle.

Q. Well, for the purpose of determining whether there was any handle on the wall?

A. Well, for no other reasons than just satisfying ourselves.

Mr. DAVIS.—I will bring that out, your Honor.

Q. Do you know Mr. Hutchins? A. Yes.

Q. How long have you known him?

A. Just about a year.

Q. Did you go down and visit that ship and that particular bath-room at the request of Mr. Hutchins? A. Oh, no, sir.

Q. Well, did you have a conversation with Mr. Hutchins about it?

A. Well, I knew he had been injured on it.

Q. Did you have any conversation about it?

A. No, sir.

Q. Why did you go down there?

A. Well, we just happened to decide to go down and look the boat over this day, Mr. Bicknell and myself.

Q. And you knew of the accident to Mr. Hutchins at that time? A. Yes.

Q. Mr. Hutchins live at your house?

A. He stopped there when he first came over.

Q. And you talked the thing over with Mr. Hutchins and then went down to the boat?

(Testimony of H. E. Wescott.)

A. Yes, after his accident I went down to the boat.

Mr. DAVIS.—All right, your Honor, then we will point out this particular bath-room.

The COURT.—That is all right. Mr. Wescott, you will meet **[199]** the party of us in front of the Bank of Hawaii this afternoon at 3:30 P. M.

Mr. DAVIS.—I am going to close the libellant's case, I think—I can do it by twelve o'clock—but will ask your Honor to sit until half-past twelve, until I finish it, so that we can get through with it.

Mr. WARREN.—I am advised that the doctor is on his way here, your Honor.

The COURT.—All right, take a short recess. **[200]**

AFTER RECESS.

Mr. WARREN.—I will have to call my witnesses out of order, your Honor. Call Mr. Metzler.

Testimony of W. H. Metzler, for Libelees.

Direct examination of W. H. METZLER, for libellees, sworn.

Mr. WARREN.—You have given your full name, have you?

A. Yes; William Hall Metzler.

Q. What is your occupation, Mr. Metzler?

A. Special Agent of the Great Northern Pacific Steamship Company.

Q. And were you employed in that capacity on board the "Great Northern" when that vessel made her trip here to Honolulu in the latter part of February of 1916, when Mr. Hutchins was a passenger?

(Testimony of W. H. Metzler.)

A. I was.

Q. And was injured by falling in a shower-room on the boat? A. I was.

Q. You know Mr. Hutchins, do you?

A. Yes, I know him by sight.

Q. Did you know him at that time by sight?

A. Yes.

Q. Do you know which shower-room or compartment that accident occurred?

A. No, I don't know which particular one, but I know it was on C deck.

Q. How many showers are there on C deck, Mr. Metzler? [201] A. Two.

Q. And how many—that is, two shower-rooms?

A. Two shower compartments.

Q. In one bath-room?

A. Yes, in one bath-room.

Q. The two compartments are in the one room?

A. Yes.

Q. After that accident did you make an inspection of both of these shower compartments?

A. I did.

Q. How soon after the accident?

A. I don't recall. When I heard about the accident I went down immediately, I think it was after dinner.

Q. On the same day? A. On the same day, yes.

Q. Did you make any examination of that shower-room with a view to taking note of the condition of it and its equipment? A. I did.

Q. Will you state to the Court what the condition

(Testimony of W. H. Metzler.)

of the two compartments, both of them, were, if there was any difference between them?

A. No, I didn't notice any difference. I tried the combination lever operating the hot and cold water, looked over the flooring and around the marble and everything looked in good shape to me.

Q. What other equipment is there in those compartments for a person to hold on to?

A. Grab-irons.

Q. Where are the grab-irons?

A. On the back slab. **[202]**

Q. On that occasion did you see any grab-irons?

A. I did.

Q. In each compartment? A. Both of them.

Q. Located where? A. On the back slab.

Q. Would you be able to recognize a photograph of either of these shower-rooms? A. I would.

Q. I will draw your attention to three photographs which are marked Claimant's Exhibits 1, 2 and 3, respectively, attached to the deposition of Mr. W. A. Scott, and ask you to look at those three photographs. You have now examined those three photographs? A. I have.

Q. Can you state whether or not they represent the shower-baths or either of them that you have examined?

A. 2 and 3 is the shower-baths on C deck. Exhibit 1 I don't know. There is no distinguishing feature about it. It might be one of the showers on B deck, they are all alike, but I know 2 and 3 are the two on C deck on account of this door here.

(Testimony of W. H. Metzler.)

The COURT.—You recognize exhibits 2 and 3 then as being photographs of the particular shower-bath on C deck that Mr. Hutchins is said to have fallen in?

A. Yes.

Mr. WARREN.—I understand you to say that you do not know whether Mr. Hutchins fell in this room shown on the right of this picture, or the compartment opposite? A. I do not.

Q. You identify this room as the one on the right? **[203]**

A. Yes.

Q. Was there at that time any difference between the compartment on the right here shown and the compartment on the left as refers to the grab-iron handle you have mentioned or indicated, and the pipes?

A. No; the only difference is there wasn't any soap-dishes there at the time; I made a particular note of soap-dishes; there wasn't any soap-dishes.

Q. The soap-dish is shown on exhibits 2 and 3 here; these have been hung on since? A. Yes.

Q. That is, since the accident? A. Yes.

Q. Did you take particular note at that time as to the presence of the handles in the shower compartment? A. I did.

Q. With what purpose did you go to that room?

A. For the purpose of examining the equipment, to see if there was any defects in the equipment.

Q. What, if anything, has that to do with your duties?

(Testimony of W. H. Metzler.)

A. Well, in the event of an accident I make a partial investigation with the doctor, the ship's doctor.

Q. State generally what your duties are on board.

A. Well, investigating all personal injuries and accidents and police duty, handling freight, that is, watching the freight.

Q. Police duty, you say?

A. What is it?

Q. Did you say police duty?

A. Police duty; yes.

Q. I want now to refer to exhibits 2 and 3, and will call your attention to the bar or rod across the compartment [204] at the top from which a curtain is suspended. State whether or not that was there at the time? A. It was.

Q. Looking at both of these exhibits 2 and 3, I will ask you to indicate to the Court if you can notice any difference between the compartments as they are shown by the photographs and as you examined it shortly after the accident, other than the installation of the soap-dishes?

A. No difference with the exception of the soap-dish.

Q. Absolutely? A. Absolutely.

Q. The compartment opposite on the left, any different from the one shown here—

A. There was none.

Q. —except that it is on the opposite side?

A. Opposite side.

Q. The water-pipes that are shown in these two photographs on the wall on the left, do you know

(Testimony of W. H. Metzler.)

whether or not the pipes that are shown are far enough from the wall to be—to permit an ordinary man's hand to go in behind and grab?

A. Yes, they are far enough to get your fingers between them,—behind them.

Q. Looking at these three pipes, where is the cold water-pipe?

A. Well, it is one of the two; this is the combination lever, and there is the mixer, the combination lever operates the two.

Q. One is the hot water and the other is the cold water? A. Yes.

Q. And the center pipe is the pipe conducting the water to [205] the shower? A. Yes.

Q. Do you know, Mr. Metzler, when those grab-handles were put in the shower compartments?

A. I don't know the exact date, but as I remember, it was two trips before this trip that Mr. Hutchins made.

Q. Do you remember how many trips the "Great Northern" had made to Honolulu that year, before this accident?

A. Three, I believe; I wouldn't say positively.

Q. Is this the third?

A. No, this would be the fourth; I wouldn't say positively unless I looked at my diary.

Mr. WARREN.—Cross-examine.

Cross-examination of W. H. METZLER.

Mr. DAVIS.—You had been talking to the captain about the grab-handles on the day of the accident, after it happened, didn't you?

(Testimony of W. H. Metzler.)

A. Not particularly about the grab-irons, I talked about the accident.

Q. You talked about the accident. Did you say anything about the grab-handles?

A. Not as I remember.

Q. You were examined as a witness before in this case, were you? [206] A. In Frisco.

Q. As to depositions, eh? A. Yes.

Q. Do you remember this question being put to you? (Reading:) When was the first time you remember talking to any officer of the ship or company about the grab-handles? Answer. The captain and I talked it over that day, the day of the accident. Remember having stated that?

A. Why, I remember stating that I talked to the captain. I think he was the first one I talked to about the accident. I don't recollect, though, talking about the grab-irons.

Q. Remember that question that was put to you?

A. It might have been the grab-iron.

Q. Is that the question and answer put to you?

A. I couldn't say.

Q. You don't remember about that, eh?

A. I don't remember that.

Q. Will you swear it was not put to you in that way?

A. No, I wouldn't swear it was not.

Q. Did you say anything to the captain about the grab-handles?

A. I think we did, yes; we both talked about the grab-irons.

(Testimony of W. H. Metzler.)

Q. That was on the day after the accident?

A. On the same day the accident occurred we talked about it.

Q. Mr. Metzler, what was your business before you were employed on the "Great Northern" as special agent and police officer?

A. I was special agent for the Great Northern railway.

Q. Yes, and before that where were you employed?

A. Captain of police of the Lehigh Valley Railroad Company. [207]

Q. And before that?

A. Pennsylvania Railway Company.

Q. Do you know a man by the name of Lefebre?

A. What is the name?

Q. Lefebre. A. I do not.

Q. You do not? A. No, sir.

Q. You never did know him?

A. Not that I recollect.

Q. Was you present—did you see a man by the name of F. G. Lefebre present when you gave your deposition in San Francisco?

A. Well, there was a gentleman there but I didn't know his name.

Q. He had been a steward on the steamship, eh?

A. Oh, no; there was no employee of the steamship company there when I testified.

Q. Is this your card? A. Yes.

Q. Look on the back; is that your writing?

A. Yes.

Q. Did you leave that card at Lefebre's—did you

(Testimony of W. H. Metzler.)

leave this card for Lefebre? A. Yes.

Q. He was a steward of the boat, anyway.

A. Yes, he was a steward.

Q. You left this card, eh, for him?

A. I left it at the Oakland Hotel, asking him to call.

Q. To call at your office as soon as possible?

A. Yes.

Q. What for? [208]

A. To question him regarding this accident.

Mr. DAVIS.—I see. We offer this card in evidence, your Honor.

Mr. WARREN.—It hasn't been connected in any way.

Mr. DAVIS.—I will connect it up. He left the card and stated for what reason. That is a police officer on the boat and I guess it is connected up sufficiently.

Mr. WARREN.—I will withdraw the objection. It is littering up the record.

Mr. DAVIS.—Did anybody accompany you when you went in that shower-bath on the day of the accident? A. No, sir.

Q. After it happened? A. No, sir.

Q. You went in alone? A. I did.

Q. Yes, and you talked this thing over with Mr. Relf in Portland, one of the officials of the steamship?

A. Why, he asked me about it some time after when I made a trip to Portland.

Q. Yes, and you talked it over with him?

(Testimony of W. H. Metzler.)

A. Not exactly. In a general conversation we talked about it though.

Q. Who is Mr. Relf? A. He is the claim agent.

Q. Claim agent of the Great Northern Steamship Company? A. Yes.

Q. The Northern Pacific Steamship Company, rather?

A. The Great Northern Pacific Steamship Company.

Q. He is the claim agent and you talked it over with him.

A. In a general conversation. He asked me something about [209] it, I don't recall, and—

Q. That was before the 23d of October, 1916, wasn't it, that you talked it over with Relf?

A. A short time before I testified at the hearing at Frisco.

Q. Exactly, before you gave your deposition. Now, how did you come to go to see this man Lefebre, or Lefevre, as you call him?

A. I understand that he was a witness in the case.

Q. Yes.

A. And there was some talk that Mr. Hutchins had secured employment for him at the Del Monte Hotel.

Q. Yes, and then you—

A. I understood that he would testify that there wasn't any grab-irons in the shower.

Mr. DAVIS.—That's not responsive, your Honor.

Mr. WARREN.—That is responsive to the question.

(Testimony of W. H. Metzler.)

The COURT.—I think it is all right, an explanation of what he heard. Of course I know it is not proof of the truth of what he heard but it is an explanation of why he went.

Mr. DAVIS.—All right, your Honor.

A. Well, I heard that Mr. Hutchins had secured employment for him at the Del Monte Hotel, and that he should have stated that there were no grab-irons in this particular shower at the time, and I went to see him in regards to that particular question because I had examined the showers and I know there were grab-irons there; in fact I examined all the showers on the ship.

Q. That's all you wanted to see him about?

A. That was all; yes. [210]

Q. But you didn't see him? A. I did not.

Q. No?

A. He called up several times, but I was too busy, I couldn't see him.

Q. Did Morris tell you he had told that man if he testified there were no grab-irons there he would have him in jail? A. No, sir.

Mr. WARREN.—I object, your Honor; that is incompetent, irrelevant and immaterial.

A. No, sir—Oh, pardon me.

Mr. DAVIS.—You saw him when you gave your deposition? A. I did not.

Q. You saw him when he gave his testimony?

A. I did not.

Q. You had gone before he gave his testimony?

A. I did not know he had given any testimony.

(Testimony of W. H. Metzler.)

Q. I see. You examined every shower-bath on all the decks, eh, on that day?

A. On B and C deck, and in the bachelor quarters.

Q. I suppose you examined them because you heard of this accident, didn't you?

A. More on account of the hot and cold water. We had some complaints about it not working just right.

Q. But you heard of the accident and then you went and examined them, eh? A. Yes, sir.

Q. Yes. Let me have that photograph, will you please? How far are these pipes separated? [211]

A. I don't know exactly.

Q. Well, as near as you can? A. Pretty close.

Q. Where is the hot-water pipe?

A. I don't know; one of these two on the side.

Q. Which one you don't know?

A. I think the one on the right; I don't know exactly.

Q. Well, a man visiting that shower-bath for the first time, the first time he ever visited it he would be liable to catch hold of the hot-water one, wouldn't he, as well as the others?

A. There's no reason to catch hold of the pipe.

Q. No, but Mr. Warren asked you if he could catch hold there; I mean a man visiting there for the first time would be liable to catch hold of the hot-water one? A. Yes, he might.

Q. And that would burn him, wouldn't it?

A. I don't know.

Q. Isn't it hot?

(Testimony of W. H. Metzler.)

A. I don't think it is as hot as that.

Q. Do you know that a man got his hand blistered in catching hold of that? A. No.

Q. You don't know whether it is so or not?

A. I do not.

Q. Do you know how far they are from the wall there? A. I couldn't say offhand.

Q. But pretty close up, ain't they?

A. You could get your fingers around all right.

Q. Did you try it? A. I don't recall. [212]

Q. No, you don't recall, but you think so, eh?

A. No need for it.

Q. You never tried?

A. I never tried to get my fingers in.

Q. The first one is the hot water?

A. I don't know.

Q. You don't know even which is the hot-water pipe? A. One of these two on the outside.

Q. But you don't know which one?

A. No, I don't.

Q. And neither did you ever try to get your fingers in there? A. Well, I may have tried that.

Q. Well, did you—you don't recall, Mr. Metzler?

A. No, sir.

Q. How long have you been in the employ of this Great Northern, Mr. Metzler?

A. Since January, 1914.

Q. On the steamship's articles? A. No.

Q. As a member of the crew? A. Yes.

Q. Yes, you would have to be. Now, will you be kind enough to inform me, is there a hospital room

(Testimony of W. H. Metzler.)

on board the "Great Northern"?

A. There is a laboratory there—

Mr. WARREN.—Are you making the witness your own?

Mr. DAVIS.—Yes.

A. There is a laboratory there that the doctor uses.

Q. Used as a hospital room?

A. Not exactly, no.

Q. What is it? A. Any patients that—

Q. Describe it to Judge Vaughan; describe the room.

A. Well, it has a sofa on one side, and he has medicines on [213] the opposite side.

Q. Any surgical instruments in there?

A. Why, he has two rooms. I don't know whether he has surgical instruments in this particular room or not.

Q. But he either has them in that room or in the room adjoining? A. Yes.

Q. Has he got bandages and all that kind of thing?

A. He is supposed to have.

Q. Eh? A. He is supposed to have.

Q. But does he have them?

A. I don't know that.

Q. Ever see them? A. Seen some; yes.

Q. Yes; and that is used when anybody gets injured, eh, isn't it, as a hospital room?

A. Why, yes; that's what it is there for.

Q. In turning on this—how do you turn on the hot water, do you know, from what place there? That handle there, does that turn on the hot or cold

(Testimony of W. H. Metzler.)

water, which one, here, this one.

A. It turns on both, you pull the handle—you pull that lever way over as far as it goes and gradually let it back until your hot and cold water is mixed.

Q. When it is first turned on it turns on the hot water?

A. Not necessarily; it may be cold. The best way is to turn it full around and then work it gradually back until you get what you want.

Q. You turn on the hot water with it?

A. The hot and the cold; they are on at the same time; you [214] use that lever to mix.

Q. That mixes it up, eh? I suppose if you don't turn it far enough there would be more hot than cold? A. Yes.

Q. If you only turned it a little ways I suppose it would be hot? A. Possibly, or maybe cold.

Q. Isn't there hot water in there all the time?

A. Not all the time; it might be ice cold.

Q. I mean when the fires are up and everything is the water very hot?

A. Hot water is always the same.

Q. What is the temperature of hot water?

A. I don't know that.

Q. But hot enough to scald a fellow, wouldn't it be, if he didn't put cold water in it?

A. If he turned on boiling hot water.

Q. The hot water alone and kept it on, wouldn't it scald you?

A. You couldn't turn the hot water on alone; it mixes.

(Testimony of W. H. Metzler.)

Q. The minute you touch it it mixes? A. Yes.

Q. It does? A. Yes, I never found it otherwise.

Q. Then it is perfectly safe to catch hold of it?

A. Yes.

Q. Didn't you testify a few minutes ago that there was a complaint that this water didn't mix properly?

A. Yes.

Q. And that the hot water—

A. That was due, perhaps, to not knowing how to regulate it. [215]

Q. You talked anyway—I want to get this straight. You talked to the captain of the "Great Northern," Captain Ahmen about this particular bath-room on the day after the accident?

A. The day of the accident.

Q. Yes, the day of the accident? A. Yes.

Mr. DAVIS.—That's all.

The COURT.—Mr. Metzler, is that what you referred to as the grab-iron?

A. Yes, sir.

Q. And that you say was there on the day of the injury? A. Yes.

Q. Shown also in this photograph No. 2?

A. Yes.

Q. How high from the floor was that?

A. Well, let's see; I should judge about four and a half or five feet.

The COURT.—That is all.

Mr. DAVIS.—When were these photographs taken, Mr. Metzler, do you know?

A. I haven't any idea, sir.

(Testimony of W. H. Metzler.)

Q. You haven't any idea, but they weren't taken until after the accident, were they?

A. I don't know that.

Q. You don't know where they were taken?

A. I do not.

Q. Or who took them? A. I do not.

Q. Neither the time or the place or the circumstances connected with them? [216]

A. No, sir.

The COURT.—If that is all, Mr. Metzler is excused. The Court will take a reces until 2:15 this afternoon.

Mr. WARREN.—I am perfectly willing to waive the afternoon session.

Mr. DAVIS.—So am I, your Honor.

The COURT.—Under the circumstances, then, there will be no afternoon session.

Mr. WARREN.—I understand the libellant's case is closed with the exception of one more witness of Mr. Davis?

Mr. DAVIS.—Maybe I'll have more; I don't know. I think we had better go on this afternoon, your Honor.

The COURT.—All right then, the Court will take a recess until 2:15 this afternoon, and notify your witnesses to be here at that time.

Mr. DAVIS.—Here is that card I introduced as Libellant's Exhibit "D."

The COURT.—All right. [217]

Honolulu, H. T., February 19, 1917.
2:15 P. M.

Testimony of John S. Ford, for Libelant

Direct examination of Mr. JOHN S. FORD, for libellant, sworn.

Mr. DAVIS.—What is your name, please?

A. John S. Ford.

Q. Are you the purser of the "Great Northern," Mr. Ford? A. Yes, sir.

Q. And were you such purser on the 18th day of February, 1916? A. Yes, sir.

Q. Now, is she a passenger ship? A. Yes, sir.

Q. Yes; well, now, how many first cabin passengers can she carry, is she allowed to carry?

A. About 540.

Q. 540, and how many second cabin passengers?

A. 104.

Q. And what is the other,—is there any steerage?

A. Third cabin.

Q. Third cabin also; you mean that is the steerage, eh? A. Yes, sir.

Q. How many steerage passengers?

A. I think our license allows about 180.

Q. 180, and how many second cabin?

A. 104. [218]

Q. Now, Mr. Ford, do you know whether there is a hospital room on board that vessel? A. Yes.

Q. How big is it? Give the Court the dimensions of it.

A. Well, it is an ordinary stateroom; I should imagine seven feet long and about six feet wide.

(Testimony of John S. Ford.)

Q. Is the doctor's office adjacent to that hospital room? A. Yes.

Q. Now, have you ever been in the doctor's room?

A. Yes.

Q. Constantly, frequently?

A. Well, quite often.

Q. Were you in there on the trip when you left San Francisco in February? A. Yes, sir.

Q. Now, had he surgical instruments in that room at that time?

A. Well, I couldn't say about his surgical instruments; he is supposed to have a full doctor's supply.

Q. Yes, and do you know whether he had cotton or bandages on board in there? A. Yes.

Q. Oh, yes, he did, and as a rule does he take any injured passengers in this hospital room?

A. Yes, sir.

Q. Who was the doctor on board on that particular trip, leaving San Francisco on the 14th of February, 1916? A. Doctor Macadory.

Q. Doctor Macadory, and where is he now?

A. Well, I understand that he is on the Island of Hawaii.

Q. On the Island of Hawaii, in this territory? [219]

A. In the Territory of Hawaii.

Q. Now, Purser, you keep the books and accounts for the steamship "Great Northern"?

A. Yes, sir.

Q. And what salary does Doctor Macadory draw?

A. His salary is $75.00 per month.

(Testimony of John S. Ford.)

Q. And his name was on the ship's articles as the ship's surgeon? A. Yes.

Q. And was Captain Ahmen on board this vessel at that particular time? A. Yes, sir.

Q. Do you know Mr. Hutchins?

A. Well, I know Mr. Hutchins to see him; yes.

Q. Well, was he a passenger on board that trip, do you remember that? A. Yes.

Q. A first-class passenger?

A. Yes, he was a first-class passenger.

Q. First cabin passenger, and how many tons burthen is the steamship "Great Northern"?

A. Well, gross tonnage is 8,255, net 4,184.

Q. She is a modern steamship?

A. Modern steamship; yes.

Q. Are there any hospital stewards on board there? A. Hospital stewards?

Q. Yes.

A. No, sir; only the doctor's, only the surgeon's.

Q. How many stewards, ordinary stewards, are there? [220]

A. Well, what we call in the steward's department, there is 135 of them.

Q. How many has the doctor got—has he some assistants among these stewards?

A. Yes, he has a room boy himself.

Q. Can he call on any—

A. He can call on anybody on the ship.

Q. He can call on anybody on the ship, and he generally takes any injured person into this hospital?

A. Yes.

(Testimony of John S. Ford.)

Q. Is it supplied with a bed?

A. Supplied with a bed, yes; a bunk we always call it on the ship.

Q. I mean a hospital bed fixed up a little different than the others? A. Just a bunk.

Q. Fitted up a little different, isn't it, from the ordinary stateroom?

A. Yes, different altogether.

Q. Exactly, fitted up as a hospital room?

A. Yes.

Mr. DAVIS.—You can take the witness.

Mr. WARREN.—No questions.

The COURT.—Stand aside. [221]

Testimony of Dr. J. G. Harrington, for Libelant.

Direct examination of Dr. J. G. HARRINGTON, for libellant, sworn.

Mr. DAVIS.—What is your name, please?

A. Doctor John George Harrington.

Q. How old are you, Doctor? A. 32.

Q. How old? A. 32.

Q. Are you a doctor of medicine holding a diploma? A. What?

Q. Are you a doctor of medicine holding a diploma? A. I am.

Q. From what school?

A. College of Physicians and Surgeons, San Francisco.

Q. San Francisco, and how long have you been practicing medicine and surgery, Doctor?

A. Six years this coming September.

(Testimony of Dr. J. G. Harrington.)

Q. Are you the present doctor on board the steamship "Great Northern"? A. I am.

Q. Are you in charge of the hospital room that has been spoken of by the purser? A. I am.

Q. Yes; now, what equipment have you on there in the way of bandages and surgical instruments, without going over the whole stuff? I simply want to know if there are bandages there in case of broken arms and limbs.

A. We are equipped to handle any emergency that may come along.

Q. Exactly, that's a fair way to put it. Then specifically [222] to answer my question, you have bandages on board? A. Yes, sir.

Q. For immobilizing, for instance, a broken arm?

A. Yes, sir.

Q. You have, also, I suppose, all kinds of adhesive plasters for such purposes? A. Yes, sir.

Q. And have you surgical instruments there too?

A. Yes, sir.

Q. And is this hospital room fitted up so as in a case of emergency you can keep a man there you would have to work with, I mean to keep him there for a few hours to look after him? Long enough to render him proper attention in that place?

A. Long enough to render him proper attention in that place.

Q. That's fair, Doctor, either medically or surgically? A. Sir?

Q. Either medically or surgically?

A. Yes, either medically or surgically.

(Testimony of Dr. J. G. Harrington.)

Q. Have you other assistants to help you, for instances, nurses of any kind?

A. I don't know as they are graduate nurses, but I can call on the stewardesses.

Q. They are generally proficient in that?

A. They do as they are told.

Q. You have had them as assistants?

A. Never had any occasion.

Q. Never had any ocasion up to the present time, but you know they are there for that purpose? [223] A. Yes.

Mr. DAVIS.—That is all I have to ask the doctor. Oh, this is your first trip, Doctor? A. Yes.

Mr. DAVIS.—Cross-examine.

Mr. WARREN.—No questions, your Honor, but I would like to say, your Honor, in connection with the last witness, I would like to have him recalled and ask him a few questions.

The COURT.—All right. Call Mr. Ford. [224]

Testimony of John S. Ford, for Libelant (Recalled—Cross-examination).

Cross-examination of JOHN S. FORD (Recalled).

Mr. WARREN.—When you were asked with reference to the compensation of the doctor, you stated that the salary of the doctor is $75.00 per month. A. Yes.

Q. Is there anything else connected with the remuneration of a doctor on board, that you did not tell?

(Testimony of John S. Ford.)

A. Well, he is allowed to charge any passenger that comes aboard—

Mr. DAVIS.—I object to that, your Honor, as incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in this case, and not subject to cross-examination and not brought out on direct examination, wholly incompetent and irrelevant for any purpose.

The COURT.—I don't know that it really amounts to much, but as a matter of fact you asked him what salary he got as the ship's doctor, and it appears that he really omitted to state this other. I don't think it amounts to anything one way or the other but I will permit the witness to answer.

Mr. DAVIS.—To which ruling we respectfully except and assign the same as error.

Mr. WARREN.—And how about the meals of the doctor—does he pay for them or does he get them in addition?

A. No, those are included with his salary.

Mr. DAVIS.—Now, Mr. Ford, isn't this payment on the part of [225] passengers a voluntary one?

A. Well, it is voluntary; yes.

Q. He is paid by the ship to look after the passengers under the direction of the captain? A. Yes.

Q. And any money he gets outside of that is voluntary?

A. Well, he is allowed to charge them.

Q. But it is voluntary? A. Voluntary.

Q. Yes, they don't have to pay?

A. He can render a bill to them.

(Testimony of John S. Ford.)

Q. Can you swear that they have to pay him for services on that vessel, the passengers?

A. Well, they should if he renders a bill.

Q. Will you undertake that they have got to pay him? A. Yes, sir.

Q. You do swear to that, do you?

A. Why sure, they should pay him.

Q. Ever know of a case of that kind where he forced a passenger to pay for medical services?

A. No, sir.

Mr. DAVIS.—No, and that's all.

Mr. WARREN.—Let me ask you, further, then, in connection with the engagement of a doctor and his presence on board, are these terms upon which the doctor's services are rendered to passengers included in any way in the terms of the ticket or passage, so that the passenger is advised whether or not the doctor may charge?

Mr. DAVIS.—I object, your Honor; he is trying to introduce secondary evidence, if there is any such a thing contained [226] in the ticket he must produce the ticket.

Mr. WARREN.—I will withdraw the question, your Honor.

Q. Will you state generally the terms under which a doctor is employed by the ship, what his perquisites are under the rules of the ship?

Mr. DAVIS.—Objected to as incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in this case, and further, that the duties cast upon the ship under this statute states

(Testimony of John S. Ford.)

nothing about remuneration.

Mr. WARREN.—I would like to make my question apply to first-class passengers, your Honor.

Mr. DAVIS.—I don't care who it is, any passenger.

The COURT.—I understand, Mr. Davis, that a ship has no right to violate the law, to violate its duty under the law, but at the same time the question is what the compensation of the doctor was; that is the question, but I will allow the whole compensation to be stated, what compensation he has received. Objection overruled.

Mr. DAVIS.—To which ruling we respectfully except and assign the same as error.

The COURT.—All right. The witness will state the full terms of the contracts, of compensation of the doctor.

A. Well, he is on the shipping articles at $75.00 per month. Of course, he gets his meals and his room. Then any passenger that comes on board with any chronic complaint if he treats them he is allowed to charge them.

Q. That is the full term of his contract?

A. Yes. [227]

Mr. DAVIS.—Have you got a copy of the shipping articles of this particular voyage?

A. Of this particular voyage?

Q. No, under whose authority is that done?

A. The shipping articles?

Q. No, no; what authority is there to allowing the doctor to charge, who allows him to charge?

(Testimony of John S. Ford.)

A. The company.

Q. Oh, the company does! I want to make that clear. Well, the company can't make the laws of this country, thank God, or any other corporation. That's all.

Mr. WARREN.—That is all.

Mr. DAVIS.—That is the libellant's case, if your Honor please.

Mr. WARREN.—Now, your Honor, that the record may contain a motion that necessarily is more or less out of order in the way the case has been heard, I want to have on the record a motion to strike from the record in this case all of the testimony of the witnesses adduced by the libellant—

Mr. DAVIS.—With the exception of this man's testimony, of Mr. Westcott, who is going down at half-past three to examine that shower-bath.

Mr. WARREN.—I don't want that out of the record. That is not the object of my motion. I move to strike all of the testimony adduced by the libellant in this case coming to the fact that the doctor on this particular case was negligent or incompetent on the ground that the case has been closed without having been supported by [228] evidence or any evidence whatever, that the company in having engaged this doctor did so with any knowledge or even suspicion of any incompetency on his part, not hereby admitting any proof of incompetency but taking the position that even though under the law the physician on board is negligent, unless it is shown that he was engaged by the company with knowledge of such in-

(Testimony of John S. Ford.)

competency or retained with knowledge of incompetency and thereafter he mistreated a case, there is no legal responsibility on the part of the company for neglect or for incompetence of a person believed to be competent in good faith at the time of the engagement. This for the purposes of the record. The matter has been pretty largely argued already.

Mr. DAVIS.—And I want to say that the motion is entirely unsupported by the law in this case. (Argues.)

Mr. WARREN.—Can we not with all of these witnesses here proceed, and do our arguing afterwards? I respectfully ask to be allowed to proceed with the case.

The COURT.—Mr. Warren has made a motion to strike the testimony out. I will say that I am not prepared to rule on that motion this afternoon, for the reason that I am not fully advised as to the construction of this particular statute. I think it would be advisable to go ahead with the evidence in the case. It is very evident to me that this statute having been on the books since 1882 must have received some consideration from the Court, and I would like to look for decisions, and I will rule on it as soon as I read them. [229]

Mr. WARREN.—In behalf of the claimant, your Honor, I will first call Mr. J. B. Morris.

The COURT.—Yes. Of course, the record shows that your motion has been made and will be taken under advisement.

Testimony of J. B. Morris, for Libelee.

Direct examination of J. B. MORRIS, for libellee, sworn.

Mr. WARREN.—Your name is John B. Morris?

A. Yes, sir.

Q. And how old are you? A. 45.

Q. And you are the chief engineer of the steamship "Great Northern"? A. Yes, sir.

Q. And were you employed on that vessel in that capacity on the trip leaving San Francisco on the 14th of February, of 1916? A. Yes, sir.

Q. Do you recall that as the trip on which Mr. C. J. Hutchins sustained an accident in the shower-room? A. Yes, sir.

Q. How long have you been a chief engineer holding a certificate as chief?

A. About eleven and a half years.

Q. On what vessels or lines have you served in that capacity?

A. Pacific Mail, San Francisco and Portland, and our own company.

Q. Prior to that time what service did you have as an [230] engineer of any kind?

A. Well, I have been assistant engineer for probably four years.

Q. What certificates or licenses do you hold?

A. I hold an unlimited American and British certificate.

Q. For steam vessels?

A. Chief engineer; yes, sir.

(Testimony of J. B. Morris.)

Q. Are you acquainted with the shower-room or rooms on the "Great Northern" on C deck?

A. Yes, sir.

Q. How many shower compartments are there in that shower-bath room on C deck? A. Two.

Q. Do you know in which of these Mr. Hutchins had his accident?

A. No, sir; I don't remember which one it was.

Q. Is there any difference between the two?

A. None at all.

Q. One is—

A. One is on the port side and one on the starboard side, facing each other.

Q. Facing each other? A. Yes, sir.

Q. Would you be able to recognize a photograph of either of these shower-rooms? A. Yes, sir.

Q. I will call your attention to three photographs which are on file as Claimant's Exhibits 1, 2 and 3 in connection with the deposition of Mr. Walter A. Scott in this case, and I will ask you to look at them.

[231]

Mr. WARREN.—While the witness is looking at those, your Honor, I would like to formally offer in evidence at this time, my case having opened, the deposition of Mr. Walter A. Scott, the deposition of William Paul Metzler,—no, he has testified.

The COURT.—Mr. Metzler has testified, Mr. Scott has not.

Mr. WARREN.—H. K. Relf we read this morning. In fact, inasmuch as it is understood that these depositions will be considered as read unless specific

(Testimony of J. B. Morris.)

objections are made, I would like to offer all of the depositions taken under the commissions with the exception of those where the witnesses called in person.

The COURT.—It being understood this morning that counsel on either side can object to specific evidences to be pointed, and unless the same are pointed out they will be considered as waived. The testimony is all considered as in.

Mr. WARREN.—Mr. Morris, you have now examined those three photographs referred to?

A. Yes, sir.

Q. Can you state whether or not those are correct representations of the right-hand shower-bath room on C deck? A. Yes, sir, that is the port side.

Q. On the port side? A. Yes, sir.

Q. There? A. Yes.

Q. Will you state whether or not in your examination of these photographs you can see anything about them indicating appliances or equipment of any kind shown by that photograph that was not there on the trip and the day when Mr. Hutchins sustained his injury? [232]

A. That is exactly as they were at that time.

Q. I will call your particular attention to what appear to be handles, or grab-irons, at the back wall of the shower compartment in each of these pictures.

A. Yes, sir.

Q. Can you state of your own knowledge whether or not these grab-irons were there on the day that Mr. Hutchins sustained that accident?

(Testimony of J. B. Morris.)

A. Yes, sir.

Q. Will you please state how you,—what means of knowledge have you in that regard?

A. By taking a look at them the following morning.

Q. You went in there for what purpose?

A. Mr. Hutchins had told me the evening before that he had slipped and hurt his shoulder, and I just took a look in there, not thinking he was seriously hurt at all, and I just took a look in the place.

Q. Did you take particular pains to notice whether or not there were handles in that compartment?

A. Well, I knew there was handles there; yes, sir.

Q. Did you look for them at that time?

A. Well, it wasn't necessary to look at them because they have been put in some time before.

Q. Do you know when they were put in?

A. Yes.

Q. Will you state?

A. They were put in there on the 24th of January.

Q. What trip was that—any particular circumstance connected with that trip that fixes the matter in your mind? [233]

A. In looking up the bills afterwards, as I remember, is what fixed that date in my mind.

Q. But otherwise your knowledge of it is from your own inspection of the shower-room—

A. Yes, that morning, that following morning.

Q. You say that Mr. Hutchins told you that he had slipped in the shower-room. Did Mr. Hutchins make any statement to you as to how he slipped or what had caused that accident?

(Testimony of J. B. Morris.)

A. Yes, he told me he had stepped on the rounding of the base.

Q. Just describe that particularly as you understood it from him, what he said to you.

A. He said that in stepping in the shower he had stepped on the rounding of the base and also stated at that time that they were not properly built, that instead of being round they should be square.

Q. Will you please take any one of those pictures, those photographs, and see if you can show us just what rounding you refer to and what rounding you know is referred to by Mr. Hutchins.

A. This is the rounding. I understood it would be in this corner here.

Q. Describe it the best you can so that it will appear in the record.

A. The rounding of the front of the base on the inside is what I understood he meant.

Q. Will you point out—

A. He said he stepped in there and stepped on the rounding.

Q. Will you please take a pencil and mark on the rounding on the back side of the basin the portion referred to as [234] portion, as to having been stepped on on the front side?

A. Just opposite the cross in that picture.

Q. Give the statements made by Mr. Hutchins just as particularly as you can.

A. Well, that is the only thing that Mr. Hutchins mentioned to me. He didn't mention any handles or any method of holding on at all, just the fact that

(Testimony of J. B. Morris.)

that base was built with a round corner and it should have square corners.

Q. He used that word corners as indicated?

A. Corners, yes, sir.

Q. Did he say anything to you to indicate whether he was in the shower-room entirely, or entering, or how?

A. From what I understood him to say was as he stepped in there he slipped, his foot slipped on that rounding.

Q. Now, will you please take note of the pipes which appear on the left-hand wall of that compartment and describe what they are?

A. There is the hot and cold water pipe, that meets below and continues on as a mixer of the hot and cold water there, and the lever and valve, a valve with a lever attached to it that opens one or the other to vary the degree of the temperature of the water, of the hot or cold water, and that pipe extends from that valve up above to the shower above.

Q. How far are these pipes from the wall?

A. I should say they were two inches and a half.

Q. Would you say there was room behind the pipes for a man to get his hand in?

A. Plenty of room. [235]

Q. Which is the hot and which is the cold pipe?

A. I wouldn't be sure of that right now.

Q. What is the size of that floor of the basin in the shower compartment?

A. It is about two and a half feet square.

Q. That is including the room?

(Testimony of J. B. Morris.)

A. Including the room, yes.

Q. Now, inside of the basin how large is that compartment?

A. I would say that it would be three inches less.

Q. What is the grade of the floor in the bottom of the compartment?

A. There is a slope toward the center to drain off.

Q. About how much is that?

A. Oh, I should say a half an inch.

Q. Will you please describe from your knowledge of the compartment what facilities there are in that compartment for a person using the same, to support himself?

A. Well, first is the handles, the grab-bars.

Q. Will you indicate that in the picture?

A. Yes, sir, here they are right here. First is the handles, which is the only thing intended to be used for that purpose.

Q. You are now referring to exhibit 2?

A. Yes, sir.

Q. And then?

A. Then there are these curtains which are put up there strong enough to hold the weight of a person provided they should fall, one could still grab the curtains. Then they could grab the sides of the shower, this [236] marble side.

Q. A person inside of the compartment would be able to help himself?

A. There is two more ways of grabbing.

Q. Yes. Go ahead.

A. He could grab the side of the marble slab, and

(Testimony of J. B. Morris.)

then you could grab that pipe, either of these pipes here, or with your left hand you could grab that door knob.

Q. Assuming a person to be inside of the shower compartment would he be able by grabbing hold of—

A. There would be four of them, yes, sir, the wall, the curtain, the grab-bar or the pipes.

Q. Once inside of the compartment could he get any assistance from the edge of the wall?

A. Yes, sir.

Q. Provided he had time? A. Yes, sir.

Q. The base of that compartment or basin is made of what material? A. Tiling, porcelain.

Q. Inside of the compartment porcelain?

A. Yes, sir, porcelain.

Q. How does that porcelain differ in any way from the porcelain used in the ordinary porcelain bath-tubs? A. It is the same.

Q. From your experience in travelling on ocean-going steamers have you ever seen shower facilities fixed over a bath-tub?

Mr. DAVIS.—Don't answer that question. I object on the grounds that it is incompetent, irrelevant and immaterial, [237] not tending to prove or disprove any of the issues in this case, and is highly improper.

The COURT.—I don't see, Mr. Warren, how that is relevant to the facts in this case.

Mr. WARREN.—I will change the question.

Mr. DAVIS.—I want your Honor's ruling on it.

The COURT.—I will sustain the objection.

(Testimony of J. B. Morris.)

Mr. WARREN.—On how many different passenger steamers have you travelled, Mr. Morris?

A. You mean as an officer, as an officer of the ship?

Q. Yes. A. Probably seventeen.

Q. Any of these fitted with shower arrangements of any kind?

A. No, sir, except—in the shower itself.

Q. I am speaking now of any means of taking a shower.

A. Oh, yes, the shower is arranged over the bath-tubs.

Q. Running into the bath-tub? A. Yes.

Q. Bath-tubs of what kind?

A. The ordinary bath, the ordinary bath-tub.

Q. Of what material? A. Porcelain.

Q. Have you in your experience given attention to the matter of equipment and bath-room facilities on board of vessels where you have served as an officer? A. Yes, sir.

Q. In the matter of furnishing them with equipment, their construction? A. Yes, sir.

Q. And in the matter of selecting the appliances to be installed? A. Yes, sir. [238]

Q. And have you had occasion in that work to give consideration to the matter of safety facilities for persons using the installations? A. Yes.

Q. Have you in that way given consideration to the point of comparative safety of one form of shower appliances as compared with other forms of

(Testimony of J. B. Morris.)

shower appliances so far as the safety of the passenger is concerned?

A. There would hardly be any difference. In good practice there is one certain way.

Q. Well, have you considered that?

A. Yes, sir.

Q. In the matter of the installation of shower compartments as on the "Great Northern" indicated by these photographs of the claimant?—

A. Yes, sir.

Q. —the form of which appears in the photographs, how in your judgment does that form of basin compare with the ordinary porcelain bathtub—

Mr. DAVIS.—I object; that is incompetent, irrelevant and immaterial.

Mr. WARREN.—Let me finish my question.

Mr. DAVIS.—Sure.

Mr. WARREN.— —from the standpoint of comparative safety of one over the other?

Mr. DAVIS.—I object to it, it is incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in this case, and is highly improper.

Mr. WARREN.—One of the allegations in this complaint is that the thing is not modern, not properly equipped and [239] constructed, and we have the right to show and prove how this construction compares with other construction and show what attention has been given to safety facilities and just what is installed by a person experienced, and I sub-

(Testimony of J. B. Morris.)

mit that this witness has qualified himself to give an opinion upon the comparative safety of different appliances of shower compartments.

Mr. DAVIS.—And I submit it is not evidence and has nothing to do with the case.

The COURT.—I think the question is whether or not this particular bath-room is safe, or had provision of safety for the room with the exercise of the proper care required. It wouldn't make any difference whether the ordinary bath-tub was an unsafe method or not. The fact that it might be dangerous and unsafe method of taking a shower-bath to have it in a bath-tub would not relieve the negligence in this case, if it was negligence, it is not a question of comparing other methods of making arrangements, but the question is whether or not this method was or had sufficient provision for safety. Taking a shower-bath in an ordinary bath-tub wouldn't render this any less unsafe, if it were unsafe—

Mr. DAVIS.—I move all the evidence be stricken out on that point.

The COURT.—He has not answered anything on this.

Mr. DAVIS.—I mean before this.

The COURT.—You can examine him fully in regard to the safety of this particular bath-room or this particular method, or what methods were provided for the safety of [240] the passengers, if he is qualified as an expert in these things, as to his opinion as to the safety of them.

Mr. WARREN.—I will withdraw the question.

(Testimony of J. B. Morris.)

Q. Calling your particular attention to what you have marked upon the photograph as a cross (X) as indicating the corner mentioned by Mr. Hutchins where his foot slipped, can you state just about how near to a right angle that corner really is,—in other words, what is the arc?

A. Probably one and a half inches, that would be three inches, a three-inch circle. The radius is about an inch and a half.

Q. And from them the slope of the floor is about a half an inch to the center?

A. A half an inch to the center; yes.

Q. How wide is the drain at the center of the floor in the bottom? The diameter?

A. It has to be sloped because the ship might be rolling and rolls everything to the center—

Q. I am asking about the drain in the center; what diameter is it?

A. I would say the strainer is probably three and a half inches in diameter. The pipe leading from it would probably be one and a half inches.

Q. What opportunity, Mr. Morris, if any, would a person have in using that bath to use the facilities which you have described and thereby prevent falling or slipping?

A. Well, it is right before them.

Q. What?

A. It is right before them, they can see with their eyes. [241]

Q. What about light there?

A. Well lighted.

(Testimony of J. B. Morris.)

Q. Things inside of the compartment being readily visible? A. Yes.

Q. To your observation, or in your experience is there anything about that shower-bath that would be likely in your judgment to contribute to a person's slipping or falling?

Mr. DAVIS.—Don't answer the question. I object to that as being highly improper and calling for a conclusion of the witness and absolutely improper. Your Honor has got the dimensions and the condition of it and it is for you to decide that and not this witness, he has no right to do it.

Mr. WARREN.—I will withdraw the question.

Q. In your opinion, Mr. Morris—

Mr. DAVIS.—Wait a minute; his Honor hasn't ruled on that yet.

The COURT.—Proceed with the examination, gentlemen; withdrawn.

Mr. WARREN.—In your opinion, Mr. Morris, is that shower compartment so equipped and placed that it may be used for showers without danger?

Mr. DAVIS.—I object, your Honor, for the same reasons, absolutely calling for a conclusion of the witness.

A. I looked after the building of it.

The COURT.—Of this shower, these showers?

A. Of the "Northern Pacific."

Q. The "Northern Pacific" shower-baths?

A. Yes, sir.

Mr. DAVIS.—That is the first time it has been

(Testimony of J. B. Morris.)

put on a ship, shower-baths, what right has he to say anything about it? [242]

The COURT.—At the same time he qualifies as an expert in building these things, and therefore qualifies as a person who is entitled to give his opinion, which the Court may or may not take. I think it is admissible testimony.

Mr. DAVIS.—Respectfully except to your Honor's ruling and assign the same as error.

The COURT.—All right.

A. I would like to hear the question again.

Mr. DAVIS.—Will your Honor allow the exceptions?

The COURT.—Yes.

(Last question read as follows: In your opinion, Mr. Morris, is that shower compartment so equipped and placed that it may be used for showers without danger?)

Mr. DAVIS.—I submit it is leading and suggests an answer.

A. Yes, sir.

The COURT.—On that ground the objection is sustained, it is leading.

Mr. WARREN.—In your opinion, Mr. Morris, what is your opinion as to the condition of that shower compartment with respect to safety or danger of its being used for showers?

Mr. DAVIS.—I object to the question on the same grounds, your Honor.

The COURT.—Overrule the objection.

(Testimony of J. B. Morris.)

Mr. DAVIS.—To which ruling we respectfully except.

The COURT.—Allowed.

A. Yes, I think it can be used with perfect safety.

Mr. WARREN.—Why?

A. Because every means I would know of has been provided for.

Q. Have you in your experience known of any shower-room [243] or compartment that had any other facility or device which you have known or heard of that is absent from this particular compartment? A. No,—

Mr. DAVIS.—Absolutely incompetent, irrelevant and immaterial, it has nothing to do with this case at all, what he knows about others. He can speak about this, he can give his opinion, and that is as far as your Honor will allow him to go. He is now going into something else. You would think that he was on all the steamships that ply the ocean, that boundless deep.

The COURT.—I think the question is permissible. Overrule the objection.

Mr. DAVIS.—To which ruling I respectfully except and assign the same as error.

The COURT.—Understand the question, Mr. Morris?

A. I would like to have it read again.

(Last question read.)

A. No, I never have.

Mr. WARREN.—Referring back to that conversation which you had with Mr. Hutchins, aside from

(Testimony of J. B. Morris.)

his having mentioned the fact that he considered that the corner should have been square instead of round, did you discuss anything else, any other feature of the shower compartments?

A. No, sir; none whatever.

Q. Do you know, Mr. Morris, since you have travelled on the "Great Northern," how many passengers she has handled?

A. Yes; I think Captain Ahmen and I figured it up one time.

Mr. DAVIS.—That has been asked and answered as to how many [244] passengers she carried. That is in evidence.

The COURT.—As to how many passengers she carried at one time, not how many she has carried.

A. I think she has probably carried eighty thousand passengers.

Mr. DAVIS.—Wait a moment; that don't answer the question. It is incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in the case. I don't care how many passengers she carried, it is how many she carried on this particular trip that we are concerned with in this action, not the total number. That is absolutely a waste of time, and is incompetent for any purpose.

The COURT.—Objection overruled.

Mr. DAVIS.—To which ruling I respectfully except and assign the same as error.

A. I think the ship has probably carried eighty thousand passengers since she was built.

Mr. DAVIS.—I move to strike the answer out,

(Testimony of J. B. Morris.)

probably carried eighty thousand passengers is not evidence in the case.

The COURT.—Motion denied.

Mr. DAVIS.—To which I respectfully except.

The COURT.—Exception allowed.

Mr. WARREN.—Do you know how frequently the shower-baths are used on board the ship?

Mr. DAVIS.—I object, incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in this case.

The COURT.—Objection overruled.

Mr. DAVIS.—To which ruling I respectfully except. [245]

The COURT.—Exception allowed.

Mr. DAVIS.—All right.

A. Continuously used, people waiting for them.

Mr. DAVIS.—I move that part of the answer be stricken out, people waiting for them. It is not responsive to the question.

The COURT.—Denied.

Mr. DAVIS.—To which I except, your Honor.

The COURT.—Exception noted and allowed.

Mr. WARREN.—Has any complaint been made to you as an officer of the company, as to the manner of construction or the condition of the shower-baths prior to this complaint made to you by Mr. Hutchins that you have stated?

Mr. DAVIS.—I object, your Honor; that is incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in the case.

The COURT.—Overruled.

(Testimony of J. B. Morris.)

Mr. DAVIS.—To which I respectfully except. It is not certain as to place, time or circumstance.

The COURT.—Objection overruled, exception allowed.

A. None.

Mr. DAVIS.—And I move the answer be stricken out for the same reason.

The COURT.—Overruled.

Mr. DAVIS.—I take exception to the Court's ruling.

The COURT.—Exception allowed.

Mr. WARREN.—From your observation and experience which you have mentioned, will you state whether or not in your opinion this bath is safely and properly constructed as [246] you conceive could be done.

A. Yes, sir.

Mr. DAVIS.—I object; it's leading and suggestive; he has already given his opinion, and it has been asked and answered and beyond that he can't go.

The COURT.—I think it is leading. I will sustain the objection. That has been covered in a previous question.

Mr. WARREN.—All right.

Q. Is the matter of safety, of appliances of that kind, one which comes under your official observation? A. Yes, sir.

Q. Do you make inspections of the shower-baths on board of vessels regularly?

A. No, sir, I do not, but I have a man that does.

(Testimony of J. B. Morris.)

Q. In this particular shower compartment you did inspect after the accident—

Mr. DAVIS.—I object on the ground that it is leading, in this particular compartment you did inspect.

Mr. WARREN.—After the accident.

Mr. DAVIS.—Wait a minute.

The COURT.—The objection that it is is leading is sustained. He has testified to all of that already.

Mr. WARREN.—If, Mr. Morris, a shower compartment of this character were furnished with a rubber mat in the bottom of the basin, what in your opinion would be the effect of that with regard to safety?

Mr. DAVIS.—I object to that as immaterial; it is incompetent and irrelevant, no mat being there or anything.

The COURT.—Is there a complaint that there was no mat there? [247]

Mr. WARREN.—Yes, your Honor; that is one of the allegations of the complaint.

The COURT.—That makes it material. Overrule the objection.

Mr. DAVIS.—Withdraw the objection.

A. I think were a rubber mat there it would be dangerous.

Mr. WARREN.—Why?

A. Because if one were to rub themselves down with soap, and his feet be soapy, he would have a tendency to slip and slide on rubber.

Q. More so than on porcelain? A. Yes, sir.

(Testimony of J. B. Morris.)

Q. Referring, Mr. Morris, to the condition of the weather on the day of the accident, the condition of the weather and sea on the morning of the accident, the morning of the 18th of February, can you tell us what that was?

A. I think the ship was rolling quite a little.

Mr. DAVIS.—I object to what he thinks. I move it be stricken out.

Mr. WARREN.—Is that to the best of your recollection?

A. Yes, sir.

Mr. DAVIS.—Wait a minute, I moved that be stricken out. This is an important matter whether the ship was rolling; I object to that and move it be stricken out. What a man thinks is not evidence in a court of admiralty.

The COURT.—I understand by the expression that the witness simply was giving his thought, his best recollection of what happened. I will take the witness' statement not to be a positive statement that it was rolling. He does not state positively that it was rolling but I understand by his expression that that is his impression now.

Mr. DAVIS.—That would be a nice thing to go to the jury on. [248] He thinks it was rolling. It either rolls or it wasn't rolling; he either knows or he doesn't know.

The COURT.—Overrule the objection.

Mr. DAVIS.—To which ruling I respectfully except.

The COURT.—Allowed.

(Testimony of J. B. Morris.)

Mr. DAVIS.—And I assign the same as error.

The COURT.—Proceed with the examination.

Mr. WARREN.—Mr. Morris, do you know a man by the name of Francis G. Lefebre?

A. Yes, sir.

Q. When did you know him?

A. He was my boy for some time on the "Great Northern."

Q. Your boy on the "Great Northern"?

A. Yes, sir.

Q. Do you remember having a conversation with him about the end of March, 1916, on board the steamship "Great Northern" when she was at Honolulu with relation to the shower-bath Mr. Hutchins was using—had used? A. No, sir.

Q. Did you at any time in Honolulu or elsewhere go with Lefebre to the shower-room for the purpose of ascertaining whether or not any handles were in there? A. No, sir.

Mr. DAVIS.—One moment, Mr. Warren. It is now nearly half-past three.

The COURT.—Yes, we have an appointment with the witness at half-past three. How long will it take you to finish with this witness?

Mr. WARREN.—I think I can finish in a few minutes. However, it is three-thirty. [249]

The COURT.—We will suspend the examination of this witness now and take it up to-morrow morning. Adjourn court until to-morrow morning at nine o'clock. [250]

In the United States District Court, in and for the Territory of Hawaii.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellees.

Honolulu, H. T., Tuesday, February 20, 1917, 9:00 A. M.

Testimony of H. E. Wescott, for Libelant (Recalled).

Direct Examination of H. E. WESCOTT (Recalled.)

Mr. DAVIS.—You went aboard the "Great Northern" yesterday in the port of Honolulu?

A. Yes, sir.

Q. Did you go into two shower-bath rooms, shower-bath compartments?

A. I went into one shower-bath.

Q. That is the one on the right going in, isn't it?

A. The showers are on the right of the room as we enter, yes.

Q. This shower, I mean, is on the right? [251]

Mr. WARREN.—These questions are manifestly leading.

Mr. DAVIS.—Where was the shower-bath you ex-

(Testimony of H. E. Wescott.)

amined yesterday, on the left or the right hand side of the room going in?

A. The showers were on the right of the room as we entered.

Q. Is that the shower you had examined previously? A. Yes, sir.

Q. Is that the—

Mr. WARREN.—Objected to as leading.

Mr. DAVIS.—Is there anything different about that shower now than when you examined it before?

A. Noticed the handles on the wall right back of the showers that were not there a year ago.

Q. When you first visited it before?

A. When I first visited the boat, yes.

Mr. DAVIS.—Cross-examine the witness.

Cross-examination of H. E. WESCOTT.

Mr. WARREN.—Never mind; no questions.

Mr. DAVIS.—All right. Call Mr. Hutchins.

Mr. WARREN.—Plaintiff's case is closed. The proper time is rebuttal.

Mr. DAVIS.—I ask to call Mr. Hutchins; I ask leave to recall him; I can't rebut my own case; the libellant has closed and submitted the case. Our case is closed.

The COURT.—We went down to the boat yesterday on the agreement of counsel, for the purpose of giving Mr. Wescott [252] an opportunity to identify the particular bath-room in the presence of the Court and in the presence of the proctors for the libellant and claimant. Mr. Wescott pointed out a bath-room which was identified by Mr. Hutchins as

(Testimony of H. E. Wescott.)
the bath-room which was used by him that morning, and Mr. Warren agreed that you need not put him on this morning, or anything of the kind. The bath-room has been identified. There is no question about that. The record will show that the bath-room was identified in the presence of the Court by Mr. Wescott and identified as that testified to by Mr. Hutchins as the one in which he fell.

Mr. DAVIS.—All right; then the libellant's direct case is closed.

The COURT.—We will suspend further hearing in this case until to-morrow morning at nine o'clock.
[253]

In the United States District Court, in and for the Territory of Hawaii.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellees.

Tuesday, February 20, 1917,
3:45 P. M.

Testimony of A. Ahman, for Libelee.

Direct examination of A. AHMAN, for libellee, sworn.

Mr. WARREN.—What is your name?

A. A. Ahman.

(Testimony of A. Ahman.)

Q. You are master of the steamship "Great Northern"? A. Yes, sir.

Q. And have been how long?

A. Since November; the beginning of November, 1914.

Q. Is that the date on which she first began to operate as a steamship?

A. No; she left Philadelphia on the 28th of January, 1915. **[254]**

Q. From where? A. Philadelphia.

Q. Then it was the following November you took charge of her as master?

A. No, the previous November.

Q. The previous November, I meant. A. Yes.

Q. Who brought the ship to the Pacific Coast?

A. I did.

Q. Did you personally familiarize yourself with the ship as she was in the east, where it was constructed? A. I did.

Q. Where was she constructed?

A. William Cramp & Sons shipyard.

Q. Of what place? A. Philadelphia.

Q. Philadelphia. How many years' experience have you had as a mariner?

A. Ever since I was a boy; about 45 years.

Q. And as master?

A. I have been master of the "Great Northern," as I mentioned before, and previous to that I was master of the "Santa Clara," and before that I was master of several sailing vessels.

Q. How many years have you had in experience,

(Testimony of A. Ahman.)

in operating passenger ships? A. Since 1886.

Q. How general has been your experience in sailing the seas, where have you been?

A. Practically all over the world.

Q. And where—

A. Oh, largely on the Pacific China trade, and Japan, Panama, [255] and Central America.

Q. What was the "Santa Clara,"—where did she run? A. San Francisco, on the coast.

Q. Coastwise? A. Yes.

The COURT.—Mr. Davis, I suppose you will admit the qualifications of Captain Ahman as a mariner?

Mr. DAVIS.—Certainly, your Honor.

Mr. WARREN.—In what passenger steamers have you served in any capacity?

A. On the "China," "City of Pekin," "City of Sydney," "Panama," and a number of others, not very many but a few besides the "Great Northern."

Q. Have you been first officer on any other passenger vessels than you have just mentioned?

A. No.

Q. Second officer? A. Yes.

Q. What vessels?

A. Second officer on the "City of Panama" and the "Asia."

Q. What opportunities have you had on vessels to observe the manner in which such vessels are outfitted and equipped for passenger service and particularly as to the facilities afforded first-class passengers for bathing?

(Testimony of A. Ahman.)

Mr. DAVIS.—That is objected to; that has nothing to do with the case about this particular bath; your Honor will rule it out as incompetent, irrelevant and imaterial. Your Honor has already ruled that out.

The COURT.—I don't think that exact question has ever been ruled out. He asked what experience he has had. I will overrule the objection. **[256]**

Mr. DAVIS.—What was done on other vessels is no guide here.

The COURT.—No; I am not permitting him to testify as to that, but he is qualified to give what knowledge or experience he has had of the equipment for bathing on other vessels for passengers, and for taking baths.

A. Well, I have been in no ships that have been equipped like the "Great Northern" is with bath-rooms and showers separate. Wherever there has been a bath-room—

Mr. WARREN.—Just a moment. My question was what opportunity have you had to study or observe the bathing facilities on passenger steamers generally.

Mr. DAVIS.—The captain told you by comparison; he said on other ships it is different.

The COURT.—He went further than the question then.

Mr. WARREN.—First state what opportunity you have had to study and observe these things.

A. As a rule, I observe these things in all the ships I have ever been.

(Testimony of A. Ahman.)

The COURT.—That answers the question.

A. And I find in no place the facilities such as we have on the "Great Northern."

Mr. WARREN.—Have you observed on these various vessels just what the equipment is for bathing facilities on passenger vessels as a rule?

A. Yes.

Q. You are personally familiar with the general equipment of passenger vessels? A. I am.

Q. Now, generally speaking, what has been your observation as [257] to what kind of equipment is ordinarily found on passenger steamers so far as means of showers are concerned?

Mr. DAVIS.—How can that affect this case? The whole question in this case is, was that place dangerous?

The COURT.—Objection overruled.

A. What was the question?

(Last question read.)

A. Well, all the ships in general what I have seen there has just been a shower on top of the bath-tub.

Mr. WARREN.—Over the bath-tub?

A. Over the bath-tub or over the trough.

Q. What kind of a bath-tub?

A. One of these round porcelain baths.

Q. Did you have any personal connection or acquaintance with the "Great Northern" during construction?

A. Partly, yes; they was finishing up things.

Q. Did they extend to observation and knowledge of the construction of her shower-baths?

(Testimony of A. Ahman.)

A. Partly, yes.

Q. Let me ask you, do you know what is the reputation of William Cramp & Sons as shipbuilders?

Mr. DAVIS.—I object to the question, if your Honor please, as incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in this case.

The COURT.—I will sustain the objection.

Mr. WARREN.—In the question of whether or not a vessel is constructed scientifically and up to date and modern, isn't it proper to show the reputation of the builders.

The COURT.—That is not the question, whether the "Great [258] Northern" is that kind of a ship or not. The question is whether or not that bathroom was unsafe by reason of the lack of any equipment for safety.

Mr. WARREN.—It is alleged here that the equipment is out of date and not modern. One of the issues in this case is whether or not this is modern equipment.

The COURT.—I don't see that the reputation of the shipbuilders has anything to do with it.

Mr. WARREN.—We note an exception, your Honor.

The COURT.—Exception allowed and noted.

Mr. WARREN.—Who are William Cramp and Sons?

A. Shipbuilders.

Mr. DAVIS.—It is incompetent, irrelevant and immaterial who they are.

(Testimony of A. Ahman.)

A. Shipbuilders.

The COURT.—He has answered. I overrule the objection. Let it go in, Mr. Davis.

Mr. WARREN.—On any of the steamships you have named, were any of them equipped with shower-baths?

A. No.

Q. Of the kind of the "Great Northern"?

A. No.

Q. Do you know of any vessel other than the "Great Northern" which is similarly equipped with shower-baths? A. I do not.

Q. Do you know the "Northern Pacific"?

A. Oh, except the "Northern Pacific."

Q. How is that vessel equipped?

A. Exactly as the "Great Northern," both sister ships. [259]

Q. Do you know the shower-room on C deck of the "Great Northern" where Mr. Hutchins had an accident? A. I do; yes.

Q. Would you recognize a photograph of that room? A. Yes, sir.

Q. While waiting for the photographs, please briefly describe the shower-room; show us how it is made, constructed and equipped.

A. It is on the port side, the right-hand side; the right-hand side is a marble slab about thirty inches wide, and on the left-hand side is also a marble slab of similar size against the wall of the heating-room. Across on top of the entrance is a bar for assisting in going into the shower-room, and also a curtain

(Testimony of A. Ahman.)

rod; it answers two purposes. In the bottom of the shower is a porcelain basin slightly lowered towards the center, sloping probably a half to an inch from the main level, from the edges, and on the entrance is a sort of wash board like, you might call it, or a coaming, that is rounded up to three inches on the outside and about equally on the inside with a rounded top, and directly on the wall is a grab-handle or grab-iron, you might call it—

Q. What wall?

A. The front wall in the shower.

The COURT.—You mean the wall that would be right in front of a man standing or entering the shower-room?

A. Yes, entering in.

Q. On the back wall of the shower or in front of a man standing in the opening? **[260]**

A. Yes.

Mr. WARREN.—I would ask you to what time does this description relate? You are describing the bath-room as of what time?

A. At the time Mr. Hutchins fell down.

Q. At that time,—I would ask you have you described all of the facilities that are there for purposes of safety to a person using the bath?

A. Yes, sir; except there is a door to the heating-room with a good-sized door-knob on it which can also assist a person coming in there if he don't want to reach up with his right hand and get hold of the bar or grab-iron.

Q. I now call your attention to three photographs

(Testimony of A. Ahman.)

marked Claimant's Exhibits 1, 2 and 3, attached to the deposition of Walter A. Scott, and ask you to look at them.

A. Yes, these are photographs of the shower-bath.

Q. What is that?

A. Photographs of the shower-bath on the "Great Northern," I presume.

Q. Will you point out on any one of these photographs the grab-handle you have referred to as being on the back wall? A. That is the one here.

Q. Are you positive that that grab-handle was on that back wall at the time of Mr. Hutchins' accident?

Mr. DAVIS.—I object to that question, your Honor, as leading and highly improper; he can ask the captain when he last saw it.

The COURT.—It is leading, and I will sustain the objection **[261]** on that account.

Mr. WARREN.—How do you fix in your mind the fact that you have stated that this handle was there?

Mr. DAVIS.—He never stated that yet.

The COURT.—Yes, he did; he stated, that is, described, the condition of it as it was at the time Mr. Hutchins was injured by his fall. Now, Mr. Warren, ask him how he fixes it in his mind as to—

A. I had one of the little tables on the veranda pulled loose from the deck, and I had it on a requisition to have it properly fixed in San Francisco that voyage, which was the beginning of January, and I

(Testimony of A. Ahman.)

happened to come up on deck at that time and Simon, he was doing the work, refastening it, and I told him also to put a brass bar or an angle-fire bar around the table for a person coming out of the smoking-room to get hold of, and he said no, to make it of wood so that anybody can get hold of it, and at the same time it acts for a tray so that glasses and things won't fall off.

Mr. WARREN.—One of these tables—

A. And I was going forward, I had some business with the purser and going up to my room at the same time. After getting through with the purser we passed the bath-room or the shower-bath and Simon went in there,—he wanted to go in there, and I said what for, and he said he had a man working to put up the grab-irons, and I went in there and saw a man in there working on it putting them up.

The COURT.—So that the substance of your answer as to how you know is, you saw a man in there putting them up? **[262]** A. Yes, sir.

Q. When?

A. The trip on New Year's, when we left, the first trip after New Year's.

Mr. WARREN.—About what date in January?

A. I don't remember exactly when that was, but I know it was the Christmas trip when we pulled this table down and we had the table fastened on that trip and also put the grab-irons in at the same time, because Mr. Simons called my attention to it at the time I went by, as he wanted to go in the shower-room.

(Testimony of A. Ahman.)

The COURT.—The Christmas trip of 1916?

A. Yes, sir.

Mr. WARREN.—Was that before or after Mr. Hutchins—

A. The Christmas trip of 1915.

Q. Was that before or after the trip on which Mr. Hutchins was a passenger?

A. No, I think it must have been two trips before he was a passenger, one or two.

Q. But it was before?

A. It was before, sir. I did not make the requisition for this, mind you. I had my attention called to it that he had a man working in there and he went himself to see if it was done.

The COURT.—They were not in there originally, to start with?

A. No, not originally.

Q. These grab-irons were not on her to start, when the ship first came out from Philadelphia to San Francisco?

A. No, they were put on in San Francisco. **[263]**

Mr. WARREN.—I call your attention to some pipes on the left wall of this shower compartment as shown in these photographs. State what they are.

A. They are heating-pipes, one steam and one cold water.

Q. Which is the cold water?

A. It is one of these two, I don't know, but it connects here in the bottom and comes up to the shower straightaway on deck.

Q. I will call your particular attention to a handle

(Testimony of A. Ahman.)

in these photographs appearing as a lever at the bottom of these pipes. Is that there now?

A. No,—let me see now; I guess it is, but there is two valves. We changed the valves, one on the water and one on the steam.

Q. When was that change made?

A. Not very long ago; the other one was worn out.

Q. Since Mr. Hutchins' trip or before?

A. No, that is lately; that is on account of them being worn out, they were leaking.

Q. But at the time of the trip of Mr. Hutchins on the boat, is this a correct representation?

A. Yes, sir, exactly.

Q. Is there anything about that photograph, or either of these three photographs which shows anything of that shower compartment or its equipment whatever in any way, in any way different from the time Mr. Hutchins was a passenger on that boat?

A. No, no.

Q. Your answer is what? You cannot shake your head. You **[264]** must answer verbally.

A. I said no.

Q. In your observation of shower-bath facilities, have you studied them with a view of determining the features of safety in their use? A. Yes.

Q. To what extent have you looked into that?

A. I don't see any way it can be improved on.

Q. No, I am asking whether or not in your experience you have, in seeing other, other equipment and bathing facilities on ships, paid attention to safety factors.

(Testimony of A. Ahman.)

A. The fact as I have stated before, I haven't been in no ships or seen no ships that have the same facilities for bathing that we have on the "Great Northern," and that is absolutely the best I have ever seen.

Q. But have you given attention to the point of safety of shower-baths, generally speaking?

A. Well, I can't see anything wrong with them; everything is there that they can get hold of to go into.

Q. Have you in your experience observed any facility or equipment in connection with the shower, by which I mean the water descending from above for the use of the passenger, which could be incorporated in this compartment and improve it in any way from the standpoint of safety?

A. Well, I don't know unless they put two assistants in there to hold somebody up.

Q. Put what?

A. Put two assistants in there to hold people up from falling down. **[265]**

Q. A couple of assistants?

A. Yes, a couple of nurses; I don't know of anything else.

Q. What about the lighting facilities in this room, Captain, where the compartment is?

A. There is one light right in the center of the deck.

Q. What can you say of the opportunity of any person going into the bath to observe the equipment and facilities in the bath?

(Testimony of A. Ahman.)

A. This light will show all over in the bath-rooms, and the showers.

Q. Have you an idea, Captain, can you tell us approximately the number of passengers that have been carried on the "Great Northern" since you have been master of her?

A. I don't remember exactly how many now. I could have if I thought of it. I had a record of it, but up until last May I carried forty-six thousand.

Q. Up to last May?

A. Up to last May, yes, sir.

Q. And could you give us your best judgment of how many since—I withdraw that. Have you also any personal knowledge of the carrying capacity of the steamship "Northern Pacific"?

A. Just about equal, we run close together, just about equal, although I think the "Great Northern" may be a thousand or two ahead of her.

Q. Prior to this accident of Mr. Hutchins, have you heard of any complaint made about any shower on either of these vessels?

Mr. DAVIS.—That is incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in this **[266]** case.

The COURT.—I think it is material, objection overruled.

Mr. DAVIS.—To which ruling I respectfully except and assign the same as error.

The COURT.—Exception noted and allowed.

A. No.

Mr. WARREN.—How many showers of this par-

(Testimony of A. Ahman.)

ticular construction are there on the "Great Northern"?

Mr. DAVIS.—That is objected to as incompetent, irrelevant and immaterial. We are concerned with one only, and *this taking* up time.

The COURT.—The case will get through quicker by letting it all in. Answer the question.

A. Two on C deck, four on B deck, and there is quite a number of them on A deck, the bachelors' quarters, I don't know how many.

Mr. WARREN.—Well, about how many?

A. Well, I guess about six on each side. I wouldn't say for sure.

Q. Do you know how frequently these showers are used by the passengers?

A. They are used all the time.

Mr. DAVIS.—Incompetent, irrelevant and immaterial, your Honor.

The COURT.—Overrule the objection.

Mr. WARREN.—You say they are used all the time? A. All the time.

Mr. DAVIS.—I respectfully except to your Honor's ruling.

The COURT.—Exception allowed. [267]

Mr. WARREN.—Are there any other precautions which from your observation in connection with shower facilities that could be used in your judgment to make this shower more safe than it is?

A. No.

Mr. DAVIS.—I object on the grounds that that has been asked and answered three times.

(Testimony of A. Ahman.)

The COURT.—Objection sustained. It has been asked and answered two or three times, Mr. Warren.

Mr. WARREN.—On this steamer "Great Northern," what facilities are there for bathing, other than these shower compartments?

Mr. DAVIS.—Objected to as incompetent, irrelevant and immaterial, I don't care.

Mr. WARREN.—I think it is quite relevant to show your Honor that a passenger wishing to take a bath, and we presume most passengers do, are not obliged to use this but may use facilities of a different kind, if they choose.

The COURT.—And if he wants a shower-bath he is entitled to use one that is perfectly safe. Objection sustained.

Mr. WARREN.—If a passenger desires to take a bath on board *board* that vessel, are there facilities for taking one other than the shower-room?

Mr. DAVIS.—Objected to on the same grounds.

The COURT.—Objection sustained.

Mr. WARREN.—Any regulations on board the vessel requiring passengers to take a bath?

Mr. DAVIS.—Incompetent, irrelevant and immaterial.

The COURT.—Sustain the objection. [268]

Mr. WARREN.—Do you know Doctor Macadory?

A. I do.

Q. When was he first engaged as a physician or doctor for the ship, do you remember?

A. When we started to run to Honolulu. He was

(Testimony of A. Ahman.)

engaged about the beginning, November 27, 1915, no, that would be 14, no, 15, 1915.

Q. At the time he was engaged did you yourself make any inquiry as to his qualifications?

A. I did, sir; I asked him where he had been.

Q. State to the Court what inquiries you made into the matter of competency and qualifications.

A. Well, I asked him if he had any experience at sea, and he told me yes, he had been in the Pacific Mail, and he also told me he had been in the United States army.

Q. United States army? A. Yes.

Q. Yes?

A. In there some place, I don't know.

Q. That is as to where he had served? A. Yes.

Q. Did you look into the matter of what certificates he held, if any?

A. No, I didn't because he was hired by the marine superintendent, Mr. Wiley, at the time, and I only asked him where he had been before he come aboard the ship, and he told me he had been in the Pacific Mail and also in the United States army as doctor.

Q. At that time had any fact or circumstance whatever come to your knowledge to raise the question of competency or [269] incompetency?

Mr. DAVIS.—Objected to, if your Honor please.

A. No.

The COURT.—Overrule the objection.

Mr. DAVIS.—To which ruling I respectfully except on the grounds that it is not proper, is leading, and is asking for something that—

(Testimony of A. Ahman.)

The COURT.—Your exception is allowed. Proceed.

Mr. WARREN.—What was your belief at the time as to his competency?

Mr. DAVIS.—I object to that, his belief is not evidence, absolutely not.

The COURT.—I understand that, Mr. Davis, but at the same time it is a legitimate question also. Overrule the objection.

Mr. DAVIS.—To which ruling we respectfully except.

The COURT.—Exception allowed.

Mr. DAVIS.—And on the ground that it is incompetent, irrelevant and immaterial, and calling for the conclusion of the witness, and that his belief as to the competency of the physician or his disbelief cannot affect this question. The question is, did he hire a competent physician, not his belief.

The COURT.—Answer the question.

A. I know that Mr. Wiley, he wouldn't—

Mr. DAVIS.—Never mind Mr. Wiley, I object if your Honor please.

The COURT.—Captain, you can say as to your belief, but not what Captain Wiley thought, and you will just answer the [270] question as to what your belief is about it.

A. My belief is that he was a doctor.

Mr. WARREN.—How long did he serve with you?

A. He served with us last winter while we were running to Honolulu, from November, 1915, to April, 1916, when the ship was withdrawn from the service

(Testimony of A. Ahman.)

to go to the coastwise trade.

Q. During his service with you, have you knowledge of any complaints that have ever been made regarding his competency? A. No.

Q. By the passengers? A. No.

Mr. WARREN.—Cross-examine.

Cross-examination of A. AHMAN.

Mr. DAVIS.—This conversation inquiring into his competency, this conversation was with Doctor Macadory himself? A. Yes.

Q. You never asked any other doctor about him?

A. I did not.

Q. Did he tell you what college he come from?

A. No.

Q. Did you write to any of the colleges or hospitals where he had been or where he had served?

A. No.

Q. That's all I want to know. A. No. [271]

Q. When were these photographs, Mr. Warren, exhibited to you, when were they taken?

A. In San Francisco.

Q. Seen any date on them, the date they were taken? A. I didn't notice any date.

Q. Do you know when they were taken?

A. I couldn't say positively, but I have an idea when they were taken.

Q. Well, I want to know positively.

A. I don't know positively.

Q. You don't. Now, then, was you in that shower, that particular shower-bath that has been pointed out to you on C deck on the morning of the

(Testimony of A. Ahman.)

18th of February, 1916? A. I was not there, no.

Q. Was you there the night before? A. No.

Q. Was you there two days before? A. No.

Q. When was you there, the last time, Captain Ahman? A. I was there to-day.

Q. No, I mean on that particular trip.

A. I don't know that I was there at all on that particular trip.

Q. You don't know whether you was there on that particular trip or not? A. No.

Q. Did you see Mr. Hutchins after the accident happened to him on the 18th of February?

A. I did.

Q. Where was he, Captain?

A. He was sitting alongside of me in the lounge-room acting [272] as judge on a mock marriage trial.

Q. What time?

A. It was about eight o'clock in the evening.

Q. You didn't have any conversation about his injuries? A. No.

Q. You never had any conversation with him?

A. No.

Q. Never asked him how he was?

A. I don't know at that time that I recollect.

Q. The doctor hadn't reported this accident of Mr. Hutchins to you, had he?

A. I feel satisfied he had not at that time.

Q. No?

A. No, because that report come in the next morning.

(Testimony of A. Ahman.)

Q. But up to that time he hadn't? A. No.

Q. What did he report, did he report it as a bruise?

A. I couldn't say, I couldn't remember now. He reported that the man fell and hurt his shoulder slightly.

Q. Was it a written report? A. No.

Q. Just a verbal report? A. A verbal report.

Q. The report as you remember it now was that the man had injured his shoulder slightly?

A. Yes.

Q. Then it passed out of your recollection, you had a lot of passengers there?

A. I don't recollect anything more about it.

Q. You never went to see the man yourself, or the doctor, any of your officers go to see him?

A. The doctor attended to that. [273]

Q. But you didn't yourself? A. No.

Q. Now, then, the condition of the surface of that particular bath, that is, the bottom of it where a man puts his foot, in plain English you don't know the condition of that on the morning of the 18th of February when Mr. Hutchins entered it, from personal examination, do you?

A. I am positive I know the bath-rooms are clean.

Q. I didn't ask you that, Captain, I asked you the condition of that, you don't know from your own examination, personal examination of it?

A. No, I didn't examine it; no.

Q. And as to whether it was slippery or not you don't know? A. I don't know; no.

(Testimony of A. Ahman.)

Q. That's fair.

A. The bath-rooms, they are as they always are.

Q. Now, these pipes that run up and down the wall, one is the hot-water pipe?

A. Yes, one is hot.

Q. If anybody took hold of it it would blister his hand, wouldn't it?

A. There is a handle there.

Q. I am saying the pipe itself, if you took hold of that pipe of hot water, that hot-water pipe, it would blister your hand, wouldn't it?

A. I don't think it is hot enough for that.

Q. What? A. I never tried it.

Q. Steam is pretty hot, isn't it?

A. I wouldn't try it.

Q. Eh? A. I wouldn't try it.

Q. Did you notice,—did you ever see Mr. Hutchins on deck [274] with his arm in this position?

A. No, I did not.

Q. Never did? A. No.

Q. Anybody ever report it to you that he did walk in that manner? A. No.

Q. I suppose you had some conversation with Mr. Warren,—oh, by the way, I will withdraw that, Captain Ahmen. I was going to ask you, Captain, are you aware that on the steamers of the Atlantic running between New York and Liverpool before the outbreak of this war, and running between New York and any place, and running between New York and Berlin, that they all have shower-baths on them, these first-class passenger ocean steamers?

(Testimony of A. Ahman.)

A. Yes, the "Great Northern" was built very much on the same plans as the "Lusitania" and the "Mauritania."

Q. And what you mean by no other ship you mean plying on the Pacific, except the "Northern Pacific"?

A. No.

Q. But on the Atlantic they all have shower-baths, these first-class steamers, like the "White Star" and the "Cunard" and the other big lines?

A. Yes, they are all fitted about the same in that line.

Q. Now, Captain, there is quite a drop, ain't there, what I mean is, I suppose it is necessary, but there is quite a drop from the outer rim of that bowl, we will call it, to the center where the water goes down, isn't there?

A. Yes, sir, there is a little drop there.

Q. Yes, and it's made of porcelain, eh? **[275]**

A. Made of porcelain; yes.

Q. And porcelain is more slippery than zinc?

A. No, I don't think so.

Q. Eh? A. No.

Q. It is not? A. No, it is not.

Q. Rough zinc?

A. Well, you can take rough porcelain, too.

Q. Yes, but I mean this is simply porcelain polished, isn't it?

A. No, it's not positively smooth porcelain.

Q. Highly polished, isn't it? A. No.

Q. Glazed? A. No.

Q. Will you swear it is not glazed?

(Testimony of A. Ahman.)

A. It is not what is called glazed porcelain. I call it frosted porcelain.

Q. You call it frosted porcelain?

A. Yes, I call it frosted porcelain.

Q. Exactly, but we saw it yesterday, too; the Judge was down there. Rather slippery, isn't it?

A. I wouldn't say it is any slipperier than zinc.

Q. But it is, ain't it, isn't it slippery?

A. I wouldn't say it is; no.

Q. It isn't the same as standing on this wood, is it, more slippery than standing on this wood, is it?

A. If the wood was wet it would probably be more slippery.

Q. Not the same as if I stand on this wood?

A. If it is dry.

Q. Swear to that?

A. I honestly believe it is not any worse.

Q. Now, Captain, it isn't like this linoleum, more slippery? [276]

A. In the condition it is now; yes.

Q. And you undertake to swear, Captain, that that porcelain bowl there is not more slippery than the zinc edge of this mat?

A. I would be willing to do it.

Q. Have you examined this?

A. I can see it from here.

Q. But you have not examined it?

A. Oh, I can see your feet going on it.

Q. Yes, I went on that porcelain bowl, too. When Mr. Hutchins said that porcelain bowl when he stepped on it was like stepping on ice he is mistaken?

(Testimony of A. Ahman.)

A. Well, there is two ways of looking at that.

Q. Well, do you think he is mistaken?

A. Yes, he is.

Q. He is mistaken?

A. Yes. If he had looked where he was going he wouldn't have slipped.

Q. I didn't ask you that. You think he is mistaken? A. Yes.

Q. When he made that statement? A. Yes.

Q. That's what I asked you, and now, Captain, you got a hospital room on board that vessel properly equipped with everything?

A. As far as I know; yes.

Mr. WARREN.—Not brought out; I object unless you make him your own witness.

Mr. DAVIS.—For that purpose I will.

Q. You got a hospital room there? [277]

A. Yes, we have one or two rooms set aside.

Q. Certainly you would on a vessel like that, and that is equipped with bandages and instruments, some surgical instruments? A. Yes, sir.

Q. And medicines?

A. Yes, medicines of different kinds.

Q. Medicines of different kinds, and all kinds of bandages?

A. Oh, lots of them, yes, and cotton batten and such as that for burns.

Q. Bandages sufficient to wind around a man's body and to wind up around a broken arm?

A. Yes.

Q. So as to keep it from moving?

(Testimony of A. Ahman.)

A. Yes, sir, we have.

Q. You have all of that? A. Yes.

Q. Who took these photographs?

A. I couldn't say who took these photographs.

Q. They were taken in San Francisco?

A. Taken in San Francisco; yes.

Q. And just when you don't know?

A. No, I wouldn't say positively.

Q. I guess that's all, Captain, I have to ask of you. You didn't see Mr. Hutchins when he went ashore? A. No.

Q. Either at Hilo or Honolulu?

A. I only saw him a couple of days.

Q. Either at Hilo or Honolulu you didn't see him?

A. I saw him at Honolulu after we got there.

Q. No, before he got there. A. No. [278]

Q. You never inquired or called personally how he was on the vessel or any time? A. No.

Mr. DAVIS.—That's all.

A. I only saw him once at the trial he was supposed to act at the night after. He was supposed to hurt himself in the morning—

Mr. DAVIS.—I am not asking you for voluntary testimony.

A. All right.

Mr. WARREN.—I think it is responsive, your Honor; let him finish it.

The COURT.—That is all right. Continue this case until to-morrow morning at nine o'clock. [279]

In the United States District Court, in and for the Territory of Hawaii.

AD. 147.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellees.

Honolulu, H. T., Wednesday, February 20, 1917.
10:00 A. M.

Mr. WARREN.—If your Honor please, I would like at this time to refer to the amendment which was filed to the libel on the morning of the 16th instant alleging incompetency of the physician on board the "Great Northern," and knowledge of incompetency of the physician by the owners, and give notice at this time that I would like to move for a deposition on that issue, a formal motion for the issuance of the commission to take the deposition is being prepared now by my partner, Judge Whitney, and will be here to-day. I am willing to make the motion orally this morning and ask your Honor to hear it that way, and to state that immediately on that day upon arrival I sent a cable [280] message to the company at Portland, Oregon, inquiring the names of such persons as I would have to take the evidence of upon that issue, and on the 17th late I received their reply to await the arrival of the

"Great Northern" and consult the captain, purser and engineer, which I did, and your Honor knows that I have been very busily engaged. I have ascertained from them the extent to which they can testify. I am not satisfied with the extent of it and wish formally to move to take the deposition of Mr. C. W. Wiley, the marine superintendent of the Great Northern Pacific Steamship Company at Portland, Oregon, as being the man who engaged Doctor Macadory and looked into the matter of his qualifications and competency.

Mr. DAVIS.—Now, your Honor, I oppose the issue of any such a deposition as all of the issues are well defined here. The libellant's case is all in now, and after it is all in he wants depositions taken. The evidence so far is that this physician done nothing, the man's arm was broken and he did nothing. It is not a question of negligence or malpractice but he did nothing but give the man two pellets, and that's all he did. There is no way in the world to show that he treated this man for a broken arm, and the question can only arise where he started to treat him and treated him unskillfully, but Doctor Macadory never did anything, never treated him at all in any way, there is no way to meet the issue, the testimony shows he never even made an attempt to set this arm or bandage it or immobilize it or nothing, he did nothing. He gave the man two pellets with a broken arm and it was so allowed [281] to remain. I don't care how competent he may have been at one time. There is evidence of incompetency that cannot be overcome except to show that he made an at-

tempt to treat this man scientifically and with reasonable care and skill. The superintendent at Portland was not on the voyage and knew nothing of the injury to the passenger, knew nothing of his treatment or anything of the kind. It doesn't make any difference, he was in their employ and it was their duty, and can they show his competency by showing at one time that he was competent and when he did nothing on the vessel? If Macadory had treated this man and made a mistake on him, all right, but he did nothing but give him two pellets, and they have got to meet that testimony.

Mr. WARREN.—Very well; I desire to be sworn on this point.

The COURT.—It is unnecessary to be sworn on that. When this case was filed counsel desired to file an amendment, and if this case had gone to trial without any amendment being made, and you had desired to prove a thing on that issue I would have permitted it and I would have allowed the other side to meet it. I can't cut parties off from getting their proof. I think I should allow it, I will allow an opportunity to take this testimony. I will allow three weeks from next Saturday for the return of the depositions.

Mr. WARREN.—And your Honor will make any modification of that if circumstances necessitate?

The COURT.—If circumstances necessitate; yes.

Mr. DAVIS.—And I object to any modification of it. [282]

Testimony of Joseph Gould, for Libelee.

Direct Examination of JOSEPH GOULD, for libellee, sworn.

Mr. WARREN.—Your name please?

A. Joseph Gould.

Q. Mr. Gould, you are a steward on the "Great Northern"? A. Yes, sir.

Q. And were on the trip when Mr. C. J. Hutchins was a passenger from San Francisco to Hilo in February last? A. I was.

Q. Are you acquainted with the shower-bath compartments on C deck of that vessel? A. I am.

Q. Would you be able to identify photographs of those shower compartments? A. Yes, sir.

Q. I will draw your attention to three photographs marked Claimant's Exhibits 1, 2 and 3, in connection with the deposition of Mr. Scott, and ask you to look at those. Do these photographs serve to identify to you any particular thing with which you are acquainted?

A. Yes, they are photographs of the showers on C deck.

Q. Will you look at this photograph carefully and state whether or not you can see whether they are correct representations of the shower-room on C deck as it was on the trip when Mr. Hutchins was a passenger?

A. They are the same. This is the port-side shower.

Q. That is the port-side shower. I will call your particular attention to what appears to be a handle

(Testimony of Joseph Gould.)

or grab-iron [283] on the back wall of this room in each of these pictures, and ask you to state whether or not you know whether or not that picture of it correctly represents—the picture in that record represents the compartment as it was on that trip.

Mr. DAVIS.—I object, your Honor; there is no evidence of it, and it is leading.

The COURT.—Objection overruled.

Mr. DAVIS.—To which ruling I respectfully except.

The COURT.—Exception allowed.

A. It is a correct representation of the room at that time.

Mr. WARREN.—How with respect to the handles there appearing?

A. I don't understand the question.

Q. Do you know of your own knowledge whether that handle was in the shower-room or was not in the shower-room on the trip that Mr. Hutchins was on? A. It was in there.

Q. Did you see it yourself? A. Yes, sir.

Q. How do you know, what circumstances fix that in your mind as to it having been there on that trip?

A. I would have to go into that at length in *bring* up the circumstances of my knowledge of that being in there.

Q. Yes?

A. I am just getting over a cold; my voice is not strong. Probably if I stand up you will hear me better.

Q. It is not necessary to stand up.

(Testimony of Joseph Gould.)

A. In working around my place, it has always been the custom in getting ready—

Mr. DAVIS.—I object to the customs. [284]

Mr. WARREN.—State the circumstances that cause you to know, the circumstances that were impressed on your mind and cause you to know that this hand-hold was there at that time, without stating the customs.

A. I visited the deck below, C deck, where this room is located to see if my mate was ready for sea, that's the reason I speak of the custom, ready for sea at a certain time before sailing, and my handles were delayed in being put on. They finished mine last. I was ready for sea and Simons came in there when I was all cleaned up and ready for sailing the day before inspection.

Q. Your handles were on the day before sailing, if I understand?

A. He came in the day before sailing when I was all ready for sea and took—he drilled the holes for the handles, for fitting the handles on up on my deck.

Q. That is which deck?

A. B deck, that's where I worked at that time, and I went down to C deck to see if my mate was ready for sea and his were all finished up and mine were not put on until the following day, that was sailing day, the 25th. On the day before, the 24th, we were all supposed to be ready for inspection or ready for sea, that's why I spoke of custom.

The COURT.—All right, sit down.

Mr. WARREN.—Cross-examine.

(Testimony of Joseph Gould.)

Cross-examination of JOSEPH GOULD. [285]

Mr. DAVIS.—Was you in that shower-bath room on the morning of the 18th of February, 1916?

A. On the morning of the 18th of February?

Q. Yes. A. No.

Q. Was you in on the morning of the 19th of February, 1916? A. No.

Q. On the 20th? A. No.

Q. On the 21st? A. No.

Q. Therefore you didn't see that handle there on the 18th of February, 1916? A. No.

Q. No, and do you know when that photograph was taken?

A. No,—I believe it was when the season run was finished, the run from the mainland to the Hawaiian Islands and return, that was before she laid up and went to dry dock.

Q. I want to know when the photographs were taken, you can fix the time.

A. I can't state positively.

Q. Well, as near as you can, what month of the year, what year was it in, were they taken in 1910?

A. Taken in 1916.

Q. Well, what month?

A. I forget now; it was either April or May.

Q. Either April or May of 1916?

A. Of 1916, somewhere around there.

Q. That's two months after this voyage that you speak of?

A. It was when the run was finished, I believe.

Q. Yes, it was after that trip; they were taken at

(Testimony of Joseph Gould.)

San Francisco. [286] A. Yes.

Q. And after that trip was finished?

A. When the season run was over.

Q. When that trip was over? A. Yes.

Q. The trip that was spoken of? A. Yes.

Q. Were you present when the photographs were taken? A No.

Q. You don't know who took them?

A. No, but I do remember being asked to unlock the doors—

Q. I am not asking you that; never mind volunteering any evidence here; just answer the questions, please. A. Very well.

Q. When I want to know anything I'll ask you. How long have you been in the employ of the "Great Northern," approximately?

A. About July, 1916.

Q. You are on the ship's articles?

A. I signed on that trip, on this run.

Q. At what wages?

A. Previous to—to about six months ago $30.00; now $35.00 per month at the present time.

Q. At the present time $35.00? A. Yes.

Q. Did you have any conversation with Mr. Morris about this particular shower-bath and these handles at any time, and if so, when?

A. With Mr. Morris?

Q. Yes.

A. I don't know that I ever had any direct conversation about them, just in looking around. I don't know as we had any [287] relative conver-

(Testimony of Joseph Gould.)

sation that would apply to this case,—

Q. Did you have any conversation?

A. I don't quite—

The COURT.—Don't interrupt the witness in giving his answer, read the answer.

(Last answer read.)

Mr. DAVIS.—I will put the question again; now he either had or hadn't.

Q. Did you have any conversation with Mr. Morris, the chief engineer, about this particular shower-bath on C deck? A. No.

Q. Did you have any conversation with any other official of the vessel about it, or connected with the steamship company? A. Yes.

Q. When?

A. After the steamer came off of this run.

Q. Who was that person you had the conversation with, Metzler? A. Mr. Relf, the claim agent.

Q. Oh, the claim agent, you had a conversation with him about it? A. Yes, sir.

Q. Can you fix the date of that conversation?

A. No, I cannot.

Q. Then you told him all you knew about it?

A. No, he asked me—

Q. I didn't ask you what he asked you.

The COURT.—He said no, and that settles it.

A. No. [288]

Mr. DAVIS.—That was after the accident to Mr. Hutchins, this was after February 18, 1916, wasn't it? A. Yes.

Q. Yes, and that took place at Portland, Oregon,

(Testimony of Joseph Gould.)

this conversation? A. No.

Q. Where? A. At sea.

Q. Was he on the "Great Northern"? A. Yes.

Q. Well, give us—can you fix the date?

A. It was in May some time.

Q. 1916? A. Yes.

Q. Who is this man you were talking about, this other man about being ready for sea, you were talking about a man you went to see, if your mate was ready for sea, who is he?

A. A bath-room steward named Burns.

Q. Is he here? A. No.

Q. Where is he, do you know, this bath steward named Burns?

A. Working at San Francisco at present.

Q. You wasn't in charge of C deck, was you?

A. No.

Q. Who was? A. Burns.

Q. I thought so. What shower-baths were you in charge of on another deck?

A. B deck, directly above.

Q. Eh? A. On B deck, directly above.

Q. Yes, you got charge of the showers on B deck?

A. Yes.

Mr. DAVIS.—That is all. [289]

Testimony of John B. Morris, for Libelee (Recalled).

Direct Examination of JOHN B. MORRIS (Continued)—Recalled.

Mr. WARREN.—Calling your attention again,

(Testimony of John B. Morris.)

Mr. Morris, to the three photographs, Claimant's Exhibits 1, 2 and 3, on Mr. Scott's deposition, I call your particular attention to a rod over the opening in front carrying a curtain on exhibits 2 and 3, and ask you to state the size of that rod and how it is secured.

A. The rod is intended to hold the curtains so when a person goes in the shower they can close them in the shower-bath by drawing the curtains. When they put these rods in they had to take into consideration that the rod must be strong enough to sustain the weight of a person who might grab the curtains and tear it down.

Mr. DAVIS.—What they take into consideration is not evidence. I move it be stricken; it is a conclusion of the witness entirely.

Mr. WARREN.—I submit the witness is qualified as an expert to state the purpose of these things.

The COURT.—The point is what size?

Mr. WARREN.—Yes.

A. The rod is about, I should judge, one and a half inches.

Q. How secured?

A. It is secured by bolting on to the marble slab at the other side.

Q. Do you know what weight it will sustain?

A. It will sustain the weight of a man of my own size, over two hundred pounds, easily. [290]

Q. What are the purposes or offices of that rod in all?

(Testimony of John B. Morris.)

A. To hold the curtains surrounding the shower-bath.

Q. And anything else?

A. No; that's the only purpose it is used for.

Q. You have spoken of it being made strong enough to hold the weight of a person if they should grab it. A. Yes, sir.

Q. Has your experience in the construction of bath-rooms qualified you to know whether or not that demand would be made upon such a rod?

A. Yes, sir; it might be made on it at any time; say when the ship is rolling and one would have a fancy to grab anything that is there to reach to hold themselves.

Q. Has there been any change in the shower compartment since the photograph was taken?

A. Yes, sir.

Q. What change?

A. The mixing valve has been changed.

Q. Will you please indicate to the Court what, if anything, has been eliminated from this compartment? A. The lever has been eliminated.

Q. At the bottom of these two pipes?

A. Yes, sir; the lever has been taken out and a cap, a solid cap put over there to take its place, there is a new method of mixing the water. We put a valve on the hot water pipe and on the cold pipe, and you just turn the two valves when you want to take a bath.

Q. That was done since these photographs were taken? A. Yes, that was done last November.

(Testimony of John B. Morris.)

Q. Referring to the shower-bath as there shown, aside from [291] that change of faucets made subsequently, can you in view of your study of the subject and the experience which you have already indicated, and irrespective of whether or not you have actually seen any improvements or devices elsewhere state whether or not you could suggest any additional facility or method of construction or arrangement of any kind which if incorporated or used in this shower-room would in your opinion be a further safeguard to persons using it?

A. No, sir; none whatever.

Q. As to light, Mr. Morris, what is the—what is the watt power of the light in the ceiling of that room? A. What we would say is 110 volts.

Q. What watt, how many candles?

A. That is about a sixty-watt lamp.

Q. Do you recollect of a trip to the vessel to Honolulu some time ago, his Honor Judge Vaughan, Mr. Cathcart, myself and yourself visited this shower-room? A. Yes, sir.

Q. Do you recall that a light was burning in the ceiling at that time? A. Yes, sir.

Q. I will ask you to state to the Court whether the strength of the light as existing at that time is different in any respect from the strength of light when the vessel is at sea?

A. Well, in port we carry a lower voltage on the ship.

Q. In port?

A. In port, yes, probably ten volts less. [292]

(Testimony of John B. Morris.)

Q. Does that make any difference in the degree of light? A. Just a little.

Q. Now, Mr. Morris, you have not named the vessels on which you have served as engineer. Will you please name a few of them? A. As chief engineer?

Q. Yes.

A. The "Siberia," "Rose City," "Lurline," "Northern Pacific"—

Q. Northern or North?

A. Northern, and the "Great Northern."

Q. And as first assistant, on what passenger vessels?

A. "Siberia," "Wilhelmina" and the "Columbia"; that's all.

Q. Did any of those vessels which you have named have a place for passengers to take showers?

A. No, sir; excepting over the bath-tubs, not any regular shower.

Q. No; you say except over the bath-tubs, what kind are those?

A. A shower arranged to play into the bath-tub while a person is standing in it.

Q. What kind of a bath-tub?

A. Just the ordinary porcelain tub.

Q. As to vessels having shower compartments or shower-rooms of this kind, what vessels do you know have them? A. I have not been on any.

Q. Except what?

A. Except the "Great Northern" and the "Northern Pacific."

Q. Except the "Great Northern" and the "North-

(Testimony of John B. Morris.)

ern Pacific"? A. Yes, sir.

Q. State whether or not in your opinion the shower arrangements [293] —I withdraw that question. Will you state how in your opinion from the standpoint of safety a shower over a porcelain bath-tub compares with a shower compartment as shown by this photograph?

A. They would have more chance to hold on to something in this shower than in an ordinary bath.

Q. Do the showers on the "Great Northern" differ in any way from those on the "Northern Pacific"?

A. No difference.

Q. You have given us a statement the other day of the number of passengers, approximately, who had travelled within a certain length of time on the "Great Northern." Do you know approximately the number of passengers who have travelled on the "Northern Pacific"?

A. I should say a similar number.

Q. How many shower-rooms are there on the "Great Northern" of this character?

A. You mean individual showers?

Q. Yes.

A. About eighteen altogether, I think.

Q. And how many on the "Northern Pacific"?

A. The same thing.

Q. Have you, prior to the complaint of the accident to Mr. Hutchins, known of any complaint to be made concerning a shower compartment on either of the vessels, the "Great Northern" or the "Northern Pacific"? A. No, sir.

(Testimony of John B. Morris.)

Q. Do you know how frequently those shower-rooms are used by the passengers? [294]

A. They are used continuously by the passengers while the passengers are on there, nights and mornings.

Q. I started to ask you, I think, awhile ago, if you had had a conversation with a man, a steward formerly on the vessel named "Francis Lefebre"?

A. Yes, sir.

Q. Do you remember having any conversation with him about the end of March, 1916, on board the "Great Northern" while she was in Honolulu?

A. No, sir.

Q. —upon the subject of the shower-bath used by Mr. Hutchins? A. No, sir.

Q. Do you know whether—would you be able to state whether you merely do not remember, or whether you did or did not have such a conversation?

A. No, sir; I did not.

Mr. Morris, Mr. Lefebre, having been called as a witness in this case, testified as follows: That he did have such a conversation with you in Honolulu and right after that—I withdraw that. Mr. Lefebre has testified he visited the shower in Honolulu with Mr. Hutchins, and further, right after that I went in the chief engineer's room and I told him that Mr. Hutchins came down and he asked me what for. "Well," I said, "He wants to see the shower-bath, to see for himself that there was no handle," so Mr. Morris said, "There must be one," and I said to Mr. Morris, "Mr. Hutchins and I just looked but we

(Testimony of John B. Morris.)

didn't see any," so Mr. Morris said, "There must be one." I says, "If you don't believe me come and see," so he went to see in [295] the shower-bath. What is the fact about that?

A. No truth in it whatever.

Q. Did any part of that conversation occur—

A. No, sir.

Q. —at any time? A. No, sir.

Q. Now, did Lefebre at that time or any time show you the shower-bath? A. No, sir.

Q. He testifies further: I showed him myself, I went inside the shower-bath and I said I showed him that there was none. What have you to say about that? A. No truth in it at all.

Q. Is that true or not?

The COURT.—He answered, no truth in it at all.

Mr. WARREN.—Now, did the witness Lefebre call you by telephone a few days prior to the time he testified as a witness in this case last October?

A. Yes, sir.

Q. What was it?

A. I don't remember the date.

Q. Do you remember what day of the week?

A. No, sir; I do not.

Q. What was that conversation you had with Mr. Lefebre?

A. The phone rang in my office and I asked who was speaking, and he said Francis. I asked who, and he told me his name, Francis Lefebre, and I had never known his name except the name Francis. I says, "What do you want?" and he says, "Do you

(Testimony of John B. Morris.)

remember me?" and I says, "No, I don't think I do"; so he says, "I am Francis, who used to be your boy [296] on the ship." "Oh," I says, "Yes, I know you now." I says, "What do you want, Francis?"and he says, "I wanted to call you up," he says, "to tell you about Mr. Hutchins," he says. "Mr. Hutchins has been good to me," and he told me that Mr. Hutchins has gotten him a position at Del Monte during the summer and had asked him to testify as to taking me in the shower and showing me the shower on the "Great Northern," and then he continued his conversation and says, "You know, Mr. Morris, I always liked you and I wouldn't want to testify in any way that would hurt you," so I says, "How do you figure this is going to hurt me, Francis?" "Well," he says, "the way I am to testify is that I took you in the shower and showed you there was no grab-handles there," and he says, "I don't like *to that,"* and I says to him, "Francis, whatever you do testify you want to testifying the truth; if you don't you are liable to go to jail for it," and I says, "Whatever you do tell the truth; if you are put on the stand you just tell the truth about everything you know." Well, he gave me the impression then that he would, that he wouldn't testify—

Mr. DAVIS.—I object to that and move it be stricken out.

The COURT.—Without giving your impression, state the circumstances.

Mr. DAVIS.—I ask your Honor for a ruling.

Mr. WARREN.—No objection. State your best

(Testimony of John B. Morris.)

recollection what he said regarding that whether or not—

A. My conversation ended right there, when I told him he better testify to the truth. [297]

Q. Now, Mr. Morris, Mr. Lefebre testified as follows: Q. "Did you tell Mr. Morris about that"—I will have to go back. Mr. Lefebre says, "I did not, but I told Mr. Morris"—this is by telephone—"Mr. Morris always been very nice to me and once I said I was very sorry to go against him because he was a builder of two ships and I did not feel like going against him, but yesterday I phoned him and I told him I was going to testify in Mr. Hutchins' case. 'Well,' he said, 'it is up to you, but I hope you will only tell the truth.' I says, 'Certainly, Mr. Morris, I will tell the truth.' He said to me, 'You know very well the handles were there four months before the accident happened.' I said, 'Mr. Morris, I give you my word the handles were not there for Mr. Hutchins and I went in the shower-bath and looked for them.' "

Did you have that conversation with him?

A. Yes, I told him, "You know very well, Francis, that the handles were there." He didn't speak of going in there with Mr. Hutchins at all in that conversation.

Q. When you told him that, what did he say?

A. I just simply repeated to have him tell the truth, that's all. I don't think he answered me at all on that.

Q. Mr. Lefebre testified: "Mr. Morris told me

(Testimony of John B. Morris.)

that"—Oh, Mr. Carey puts the question, "State what he said." Answer by Lefebre, "He told me that Mr. Hutchins wanted him to testify that the handles were on the ship while"—wait, I am mixed up on the deposition. I will withdraw that. [298] I will call your attention to that part of his statement which I have already read to you as a whole: "I give you my word that the handles were not there for Mr. Hutchins and I went in the shower-bath and looked for them." Was that a part of that conversation?

A. No, sir; I did not have any continued conversation with him at all. I was too busy and cut him off.

Q. Mr. Morris, when did the "Great Northern" arrive at Hilo on this trip? A. November 20th.

Q. November? A. I mean February the 20th.

Q. What time of day?

A. She arrived at eight-thirty in the morning.

Q. What time did the vessel leave Hilo for Honolulu? A. Shortly after midnight.

Q. How many—what length of time was there for shore leave, passengers having opportunity to go ashore?

A. The passengers probably got off the ship about a quarter past ten to go ashore, and they would be able to stay ashore until half past eleven or twelve o'clock.

Q. What time did the vessel,—that is, at night?

A. Yes, they could come aboard any time before midnight.

Q. What time did the vessel arrive at Honolulu

(Testimony of John B. Morris.)

that trip? A. Ten o'clock the following morning.

Q. The vessel arrived at Honolulu at ten o'clock the following morning; Mr. Morris, do you know personally of any physicians and surgeons practicing medicine in Hilo?

A. I know Doctor Sexton and Doctor Potter. [299]

Q. Doctors Sexton and Potter?

A. And Doctor Irwin.

Q. Have you as an employee of the Great Northern Pacific Steamship Company served in any capacity other than as chief engineer? A. Yes, sir.

Q. Will you state what it was?

A. I served as inspector of the ship in its building and as marine superintendent and as assistant marine superintendent.

Q. Do you know what day these shower-bath grab-handles were put on in the "Great Northern"?

A. Yes, they were put in about January 24th.

Q. Of what year? A. 1916.

Q. How do you know that?

A. Well, I know that from the office files of the marine superintendent.

Q. The date? A. Yes.

Q. Now, aside from the date, do you know whether they were in before or after the trip Mr. Hutchins made? A. It was before that trip.

Q. How do you know that?

A. By the files in the office.

Q. Were you chief of the vessel on that trip?

A. On the trip Mr. Hutchins made?

(Testimony of John B. Morris.)

Q. Yes. A. Yes, sir.

Q. Did you on that trip visit the shower compartment and observe whether or not the handles were there? A. Yes, sir.

Q. And what did you observe as to the handles? [300]

A. That they were in their places.

Q. Do you know Doctor R. J. Macadory?

A. Yes, sir.

Q. He was the ship's doctor on the trip that Mr. Hutchins was a passenger? A. Yes, sir.

Q. And how long prior to that had he been ship's doctor?

A. Since November the 7th,—November the 6th, 1915.

Q. Do you personally know the circumstances connected with his engagement as doctor for the trip?

A. Yes, sir.

Q. Were you present?

A. I was present when he entered my room looking for the marine superintendent, Mr. Wiley, who was sitting on my settee talking business with Mr.—

Q. Pardon me; you say you were marine superintendent at one time? A. Yes, sir.

Q. Will you state if you know whose office or duty it is to engage surgeons for ships?

A. The marine superintendent's.

Q. Yes, and now will you proceed with that statement of the engagement?

A. I was sitting in my room talking business with Mr. Wiley when Doctor Macadory came in the door,

(Testimony of John B. Morris.)

knocked and came in, and he asked for Mr. Wiley. I says, "Here is Mr. Wiley right here," so he addressed Mr. Wiley and said, "I am Doctor Macadory." Mr. Wiley at that time asked him in and shook hands with him and says, "Doctor,"—evidently [301] they had some correspondence on the subject,—and he asked him, he says, "Doctor, have you a certificate for practicing in the State of California," and the doctor answered, "Yes," and he says, "You have been on different ships?" "Yes," and he asked him what places he had been, and he mentioned, I think, two ships of the Toyo Kisen Kaisha.

Mr. DAVIS.—He need not state the conversation these people had together. Does your Honor hold that is testimony? There is no way to deny this.

The COURT.—Yes, I am going to hear all of this proof. He is to be here this week, and I may hear some that I may determine later as immaterial.

Mr. DAVIS.—But I don't think this conversation between these people is evidence and what they done is evidence. No way for us to deny it.

The COURT.—Overruled.

Mr. DAVIS.—We object to it on the grounds that it is hearsay, is incompetent, irrelevant and immaterial, and not tending to prove or disprove any of the issues in this case.

The COURT.—Overrule it.

Mr. DAVIS.—To which ruling I respectfully except.

The COURT.—Exception allowed.

(Testimony of John B. Morris.)

A. I left the room then.

Mr. WARREN.—You say he named some vessels?

A. Yes.

Q. What vessels?

A. I think he named the "Tenyo" and the "Chiyo Maru," I am not [302] positive.

Q. Any other steamship line mentioned?

A. That I am not sure of.

Q. Any other previous service of the doctor?

A. He mentioned the fact that he had been a surgeon at Camp McKinley, an army surgeon in Honolulu.

Mr. WARREN.—Cross-examination.

Cross-examination of J. B. MORRIS.

Mr. DAVIS.—When did he quit the service of the "Great Northern," this Doctor Macadory?

A. He quit on the last voyage of the "Great Northern."

Q. Under what circumstances did he leave the service?

A. The Hawaiian service was finished, and they didn't require a doctor on the coast run, the law doesn't require a doctor on the coast run.

Mr. WARREN.—I would like to ask another question.

Mr. DAVIS.—Sure.

Mr. WARREN.—I would like to ask you, how long did Doctor Macadory serve on the ship, if you know, until she came off the run?

A. Until she came off the run, yes.

(Testimony of John B. Morris.)

Q. And you were serving as chief on board at the same time? A. Yes, sir.

Q. Have you at any time prior to the complaint made concerning the doctor by Mr. Hutchins known of any complaint or [303] objection being made to Doctor Macadory on the ground of his qualifications or competency as a physician? A. No, sir.

Mr. DAVIS.—On the trip of the "Great Northern" from San Francisco or San Pedro to Honolulu via Hilo or any other trip across this ocean, has there been any voyage on which there has been no doctor on that ship? A. No, sir.

Q. Always had a doctor?

A. Always had a doctor across to Honolulu.

Q. Yes, and when did you say Macadory left?

A. He left, I think it was April the 12th, when the ship came off the Honolulu run.

Q. Wasn't he discharged? A. No, sir.

Q. Where is he now, do you know?

A. I believe he is on the Parker Ranch.

Q. Up on the Parker Ranch; what is he doing there?

A. Physician.

Q. Did you see Mr. Hutchins after he was injured on that steamer? A. Yes.

Q. Where? A. That evening.

Q. Where was he?

A. He was in that mock trial.

Q. Yes, and did you notice the position he held his hand in? A. Yes.

Q. How was it, just show the Court.

(Testimony of John B. Morris.)

A. He had his hand in a sling.

Q. Had his hand in a sling? A. Yes.

Q. You don't know who put the hand in the sling? **[304]** A. No, sir.

Q. The doctor didn't do it? A. I don't know.

Q. You don't know? A. No, sir.

Q. Didn't he have his hand in his vest this way, and not in a sling

A. I am certain he had his hand in a sling.

Q. You are certain? A. Around his neck.

Q. You are certain?

A. Well, I wouldn't say positively, but I have that impression.

Q. I see, that is your impression, but at all events his hand was in this position.

A. Yes, sir, as though he was in pain.

Q. Yes. This man Lefebre you speak of, he was your steward on the vessel? A. Yes.

Q. Yes, now, do you know whether Mr. Hutchins was aboard the "Great Northern" in April of 1916?

A. I didn't know of it? Q. Eh?

A. I didn't know of it; no, sir.

Q. You wouldn't say he wasn't?

A. I wouldn't say he wasn't; no.

Q. Was that man Lefebre on board the vessel in April, 1916, when she was here in Honolulu?

A. I don't remember that. Stewards change very frequently and I could not place that he was.

Q. Well, wasn't he your steward at that time in April, 1916? A. I am not sure whether he was.

Q. You can't remember that? A. No. **[305]**

(Testimony of John B. Morris.)

Q. And yet you remember positively enough to state that you didn't have that conversation?

A. I do, certainly.

Q. Your memory isn't very good, Mr. Morris, when you can't remember whether that man was your own steward in April of 1916.

A. Stewards change very frequently; it's pretty hard to keep tab on them.

Q. If you don't remember that, eh, your memory must be pretty poor, isn't it?

A. No, sir; I have a good memory.

Q. A good memory; who was your steward in April of 1916, when your steamship was here in Honolulu? A. I don't know.

Q. You don't know. These handles on these bath-tubs that contain the shower are over there on the side of the wall, are they not?

A. On the back of it.

Q. No, I mean the ordinary bath-tub where there is a shower over it that Mr. Warren was asking you about, the handles are on the side of the wall, ain't they? A. Yes.

Q. They are about two feet long?

A. No, sir; not in the "Great Northern."

Q. I am talking of other steamers; how long are they, these handles?

A. They are generally big enough to enclose your hand.

Q. I asked you how long they are, lengthwise, this way. A. Six inches long. **[306]**

Q. Ain't they a foot? A. No, sir; not always.

(Testimony of John B. Morris.)

Q. Well, a good many of them?

A. Some of them are.

Q. And the handle is of wood, isn't it?

A. Not always; sometimes brass and plated.

Q. But mostly wood, ain't they?

A. Sometimes.

Q. And they project quite a distance from the wall? A. Yes, about two and a half inches.

Q. Yes, further than these handles on this shower-bath where this accident—where this is crossed?

A. Sometimes; it all depends on the strength of them.

Q. Exactly, and in a good many instances they project further than this handle? A. Yes.

Q. How long do you say this handle is?

A. I should say five inches.

Q. Was you in this shower-room on the morning of the 18th or any time during the day that Mr. Hutchins was injured? A. I was in there on the 19th.

Q. But I asked you on the 18th, was you in there?

A. No, sir.

Q. Well, the day of the 19th when you went in, you didn't have hold of any handle, did you?

A. No, sir.

Q. No; you stated positively, Mr.— will you state positively that Lefebre did not come into the engine-room on the day that Mr. Hutchins was aboard the "Great Northern" and have any conversation with you about these handles? A. Yes, sir.

Q. You positively state that your memory is fresh in that? [307] A. Yes.

(Testimony of John B. Morris.)

Q. What is there that recalls that? You are in position to deny that absolutely when you don't know whether he was on the boat or not; just explain it, please.

A. I know I never had any conversation of that kind with him.

Q. Yet you don't know whether he was your steward at that time? A. No, sir.

Q. Yes; well, is there anything to recall why you didn't have that conversation with him, does anything suggest itself—remember this witness is remarkable, Mr. Warren—is there anything to recall it specially to your mind?

A. Nothing at all.

Q. I suppose you had a conversation with your steward most every day while he was on the ship, didn't you, more or less? A. Very little.

Q. Well, he spoke to you, didn't he?

A. Oh, he would say "Good morning."

Q. He would say good morning, and if there was anything wrong, and he call your attention to anything he did, he did it, didn't he?

A. He didn't have anything to call my attention to, the chief steward would.

Q. But do you mean to tell me that your steward who was employed to look after you, didn't visit the engine-room sometimes? A. No, sir.

Q. He never was in there during the trip, eh? [308] A. No, sir.

Q. And he never was in your office on the steamer?

A. He was in my office every day.

(Testimony of John B. Morris.)

Q. Yes, he was in your office every day, and you talked to the man? A. No, sir.

Q. You never said anything to him?

A. No, sir; just to say good morning to him.

Q. That's all, eh? A. Yes.

Q. And you swear you never said anything else to that man Lefebre except good morning, you swear to that?

A. I generally say good morning to him, but I got no occasion to talk to him.

Q. Well, will you swear that you never had any other conversation with him? A. No, I won't.

Mr. DAVIS.—No, I should think not.

The COURT.—Take a recess for five minutes.

AFTER RECESS.

Mr. WARREN.—As to my motion for a deposition in the case, I am ready to forward the written interrogatories.

Mr. DAVIS.—All right; let's have the written interrogatories.

Mr. WARREN.—A formal order will be entered this afternoon as made this morning. I will stand on my motion as made.

The COURT.—All right; the motion is granted.

Mr. DAVIS.—I will ask Mr. Warren to be good enough and that he be given until Friday morning to file his interrogatories and me until Saturday morning to file my cross. [309]

Mr. WARREN.—I agree to that, your Honor.

(Testimony of John B. Morris.)

The COURT.—All right; proceed with the case, gentlemen.

Mr. DAVIS.—Now, Mr. Morris, you wasn't in that bath-room on the 18th of February to make any inspection as to whether or not the surface of it was slippery or otherwise; I mean of your own personal knowledge, on the 18th of February? A. No, sir.

Q. No. Now, when a bather is standing in the shower-bath where this accident happened, that is—after he gets in with his face to the wall, has he got any chance to catch hold of that rod you were talking about where the curtain is, after he is in, mind you?

A. Yes.

Q. Ain't it right behind him?

A. Yes, behind him.

Q. Yes, and he would have to reach back this way, wouldn't he? A. Yes.

Q. How high is that rod?

A. Probably six foot six high.

Q. Yes, and if a man was slipping or falling he would have to throw his hands up this way?

A. Well, he could use that grab in front of him.

Q. Never mind that grab; I am talking about the rod now. A. Yes.

Q. He would have to put his hands behind him, eh?

A. Yes.

The COURT.—To catch the rod?

A. Yes, to hang by the rod.

Mr. DAVIS.—It's not directly over his head?

A. If he is falling he is under it. **[310]**

Q. But it is not directly over his head?

(Testimony of John B. Morris.)

A. No, sir.

Q. Therefore he would have to put his hands back this way? A. Yes.

Q. That is almost a physical impossibility, isn't it,—don't you know now that that's almost physically impossible for a man to do that?

A. If he is falling it isn't.

Q. Eh?

A. If he is falling it isn't.

Q. Putting his hands behind him and grabbing that way, you say that's not impossible?

A. If he is falling it is right over his head.

Q. Oh, it's inside? A. Yes.

Q. Right over his head when he starts to fall?

A. Yes.

Q. Therefore it's almost impossible to grab it?

A. No.

Q. It is not impossible? A. No.

Q. It could be done? A. Yes.

Q. But not the natural way for a man to do, is it?

A. No.

Q. That's fair; it's not the natural thing for a man to do and would be the last thing for him to do, wouldn't you think so, to shove his hands behind him?

The COURT.—What a man may think about when he is falling is a matter you need not question the witness about.

Mr. DAVIS.—I want it on the record, and if this case goes up I want it to go up right. **[311]**

(Testimony of John B. Morris.)

The COURT.—The position of it is all right to put in, I think.

Mr. DAVIS.—The position,—all right. The side of that bath-tub where these pipes will be, Mr. Morris, there is hardly room for a man to get his hand in behind, is there?

A. Plenty room.

Q. Plenty room, how far are they from the side of the marble slab?

A. I should say two and a quarter inches.

Q. Have you ever measured it?

A. No, sir; I judged it with my eye.

Q. I know, but you never measured it? A. No.

Q. And you don't know? A. No, sir.

Q. That's just the case, eh?

A. I remember looking at it and judging the distance.

Q. Now, they took out those handles on the valve, didn't they? A. They took out the handle, yes.

Q. Because people are apt to turn on the hot water with it, isn't that the reason?

A. On account of the difficulty in mixing, too much trouble to overhaul them. They leaked and wouldn't mix properly so we thought the better arrangement was to put two valves on.

Q. And the pipes that run up the side of this marble slab you talked about, one is hot water?

A. Yes.

Q. Which one?

A. The one furtherest from you. [312]

Q. The furtherest one, and the one a man would

(Testimony of John B. Morris.)

be likely to catch hold of first? A. No.

Q. I mean if he was in?

A. He would catch hold of the opposite one first.

Q. But the hot water is the closest to him?

A. No, sir; the cold water is closest to him.

Q. The cold water is the outside one?

A. The cold water is the outside one.

Q. Yes, but if he is in the shower-bath you mean to tell me that the cold-water pipe is as near to him than the other? A. Nearer to him, I should judge.

Q. Ever try it?

A. Yes, I have been in there.

Q. Yes, and you will swear that the outside pipe is closer to your hand than the inside one, will you?

A. I would say so, yes, sir.

Q. But you are inside the shower, in the compartment?

Mr. WARREN.—I object to that as being asked and answered.

Mr. DAVIS.—Ain't you?

A. Yes.

Q. You are inside and facing the wall and these pipes are right alongside, ain't they? A. Yes.

Q. Yes, three of them? A. Three of them.

Q. And it would be on the left in that particular shower? A. Yes.

Q. Now, here is your right hand on this side; now, which would be the nearest to the right hand the outer or the inner pipe? **[313]**

(Testimony of John B. Morris.)

A. Well, I am figuring his left hand is nearer to the pipes.

Q. How about the right?

A. Well, the right hand is on the other side altogether.

Q. Well, which would be the nearer to the right?

A. Well, any of them for that matter; all the same distance.

Q. Wouldn't the hot water be closest to his right hand if he was reaching around facing the wall?

A. All the same distance.

Q. The same distance? A. Yes.

Q. Wouldn't it be more convenient for him to catch the hot-water pipe first? A. No, sir.

Q. You swear to that, will you? A. Yes.

Q. Because the Judge was in there?

A. All right.

Q. How old are you, Mr. Morris?

A. Forty-five.

Q. Where did you study engineering?

A. I started in a machine-shop.

Q. Eh?

A. I started in a machine-shop serving time as an apprentice, as a machinist.

Q. Where, Mr. Morris?

A. At the Vulcan Iron Works, San Francisco, California.

Q. Pretty hard for you to remember a conversation and everything that happens on a vessel like that, a big vessel like that where you have responsibility as a chief engineer, isn't it?

(Testimony of John B. Morris.)

A. Sometimes.

Q. Yes, but there are certain things you will always remember, eh, some things are impressed on your memory? [314] A. Yes.

Q. But one thing you do remember, you didn't see the handle in that bath-room on the 18th of February, did you? A. Not on the 18th.

Mr. DAVIS.—No; that's all.

Mr. WARREN.—That is all.

The COURT.—Stand aside, Mr. Morris? [315]

Testimony of Thomas S. Mills, for Libelees.

Direct examination of THOMAS S. MILLS, for libellees, sworn.

Mr. WARREN.—Mr. Mills, you say your full name is Thomas S. Mills?

A. Yes, sir.

Q. Was your testimony taken at San Francisco last October? A. Yes, sir.

Q. Your name appears here as C. S. Mills.

A. T. S. Mills.

Q. What is that? A. It should be T. S. Mills.

Q. That is an error? A. Yes, an error.

Q. You are the chief steward of the steamship "Great Northern"? A. Yes, sir.

Q. And how long have you been holding that office? A. Since the 10th of August, 1915.

Q. Were you holding that position in the month of—

Mr. DAVIS.—That is all admitted, your Honor, I thought he called him about the handles.

(Testimony of Thomas S. Mills.)

Mr. WARREN.—February, 1916?

A. Yes, sir.

Q. Do you personally know the shower compartment on C deck of the steamship "Great Northern"?

A. Yes, sir.

Q. Would you be able to identify a photograph of that shower compartment? A. Yes, sir.

Q. Look at Claimant's Exhibits 1, 2 and 3 attached to the **[316]** deposition of Mr. Scott, now before you, and ask you if you know what that represents?

A. That is the shower-bath on C deck.

Q. I call your particular attention to a grab-handle or iron appearing on the back wall of the shower compartment, as shown in each of these pictures, and I will ask you directly do you know of your own knowledge whether or not that handle was in that compartment on the voyage and before the ship sailed on the voyage on which Mr. Hutchins was a passenger? A. Yes, sir.

Q. Did you personally—how do you know that, can you state what circumstance fixes that in your mind?

A. Yes, sir, I made the requisitions out for it and checked the requisitions up before we sailed and the time they was put on—

Mr. DAVIS.—It's incompetent, irrelevant and immaterial about the requisitions.

The COURT.—Objection overruled.

Mr. DAVIS.—Exception, your Honor.

The COURT.—Allowed.

Mr. WARREN.—Did you personally inspect that

(Testimony of Thomas S. Mills.)

shower-room after the handles were put on and before the vessel sailed on that trip with Mr. Hutchins? A. Yes.

Q. When did you make that inspection?

A. On the morning we sailed, on the morning of the 25th of January.

Q. On what day was that handle put on, do you know? **[317]**

A. Why, they started on them on the—we got in on the 20th, and they—

Mr. DAVIS.—No use taking up time with that.

A. The requisition was put in on the 20th for them and they were finished on the 25th, the morning of the 25th.

Mr. WARREN.—Did you personally see that handle in there on the morning of the 25th?

A. Yes, sir.

Q. Did you personally see the work being done?

A. I did.

Q. Was that in any way connected with your official duty on the ship? A. Yes, sir.

Q. Have you with you the original requisition you made for these handles? A. Yes, sir; I have.

Q. Will you produce them? A. Yes, sir.

Q. You have now handed me one, two, three, four, five, six, seven—seven sheets of paper fastened together with a pin, and you have pointed particularly to page,—to the sixth page. A. Yes, sir.

Mr. WARREN.—I would like to offer these in evidence.

(Testimony of Thomas S. Mills.)

Mr. DAVIS.—That's the requisition for the handles?

Mr. WARREN.—Yes.

The COURT.—What is the date of it?

Mr. WARREN.—I would like to just indicate this to your Honor. This requisition is a purchase requisition dated February 21, 1916— [318]

A. The date on the bottom, Mr. Warren.

Q. What is that date, February 21, 1916?

A. That is my order number, S–27.

Q. What is February 21, 1916?

A. That is when the bills were vouchered, I presume.

Q. Vouchered?

A. When the bills were accepted.

Q. What is the date of the requisition?

A. January 20, 1916.

Q. I see, down below? A. Yes.

Q. This is your own signature, T. S. Mills, on this requisition? A. Yes, sir.

Q. Chief Steward, January 20, 1916?

A. Yes, sir.

Mr. DAVIS.—No objection to it going in the evidence, your Honor.

Mr. WARREN.—That requisition having been made, do you know personally of the work being done? A. Yes, sir.

Q. After the work was done did you know of any bill being rendered for the work?

A. Yes, sir, I do; I had to O. K. the bill before it was accepted.

(Testimony of Thomas S. Mills.)

Q. Did you O. K. the bill? A. I did.

Q. Before O. K.'ing the bill, did you make an inspection before or after O. K.'ing the bill?

A. Before I O. K.'d the bill.

Q. Have you the bill? A. Yes, sir.

Q. Produce it.

A. The original bill is attached to the requisition.

[319]

Q. Will you please with a pencil mark in the right-hand margin opposite the item of cost the item which covers these grab-handles? You have now marked on page—the third page of this set of papers and the second page of the bill— A. Yes.

Q. The date of this bill is January 25, 1916. The item indicated by the witness, ten nickel-plated pulls, $7.10. Does that item relate to these particular handles of which that one is one?

A. Yes, sir.

Q. On this bill in the lower left-hand corner are the words, O. K., T. S. Mills, Chief Steward. Is that your signature? A. Yes, sir.

Q. When did you put that on?

A. 25th of January.

The COURT.—It will be admitted.

(Marked Libellees' Exhibit 1.)

Cross-examination of THOMAS S. MILLS.

Mr. DAVIS.—Did you have any conversation with Lefebre after the accident to Mr. Hutchins on the 18th of February?

A. No, sir.

Q. Never saw him afterwards?

(Testimony of Thomas S. Mills.)

A. I seen him; yes, sir.

Q. Yes, but you never talked to him, eh?

A. No.

Q. Didn't you indicate to him that he would be appointed as [320] deck steward if he didn't testify? A. I did not.

Q. Were you in that bath compartment, that shower-bath compartment on C deck where the accident happened to Mr. Hutchins, on the morning of the 18th of February? A. I was.

Q. You was in there? A. Yes.

Q. Take a bath? A. No, sir.

Q. What was you doing there?

A. Going in there for inspection.

Q. What time was it? A. Eleven o'clock.

Q. About eleven o'clock in the morning, eh?

A. Yes.

Q. Went through, eh? A. Yes.

Q. And how many other bath places did you inspect, shower-baths, that morning?

A. Every one in the first cabin.

Q. How many altogether, approximately?

A. Three.

Q. Three? A. Yes.

Q. But how many compartments?

A. How many?

Q. Yes. A. Six.

Q. On all the decks? A. Yes.

Q. And C deck three, eh? A. Three baths.

Q. All there is on the ship?

A. No, sir shower-baths in the first cabin, four in

(Testimony of Thomas S. Mills.)

A deck, rooms connecting with private rooms.

Q. Did you go through all of those? A. No, sir.

Q. Only just these public ones?

A. Yes, sir. **[321]**

Q. And did you—is there any in the second cabin?

A. Yes, sir.

Q. Did you inspect there? A. No.

Q. Who was with you? A. The captain.

Q. The captain and you just passed around through, eh? AR. Yes.

Q. Didn't spend much time going through the whole ship, eh? A. No we didn't lie on the job.

Q. You make a regular morning inspection on the steamship "Great Northern," you and the captain and the doctor? A. No, the captain and myself.

Q. The captain and yourself alone, eh? A. Yes.

Q. And you had to make an inspection of the whole business, the whole ship? A. No.

Q. Well, what portion did you and the captain inspect that morning? A. The saloon.

Q. And the bath places? A. The baths.

Q. And the staterooms?

A. Staterooms unoccupied.

Q. How many staterooms? A. Unoccupied?

Q. How many unoccupied staterooms?

A. I couldn't say.

Q. And how often do you have to do that?

A. We don't have any certain time.

Q. How long did it take you on that particular morning?

(Testimony of Thomas S. Mills.)

A. It might have taken twenty minutes, it might have taken forty minutes.

Q. You are not positive of it, eh? A. No. [322]

Q. You don't remember whether it was twenty or forty minutes, yet you remember everything in connection with this particular bath, this compartment where Mr. Hutchins—

A. My business is to check up, and make bills and requisitions.

Q. I am saying that morning of the 18th you observed everything but you don't remember how long the inspection took, but you remember everything about that C deck bath on that deck, that bath on C deck where the accident happened to Mr. Hutchins, you remember all about that?

A. It is my business to remember that. I go in these baths six or seven times a day to make inspection.

Q. Was you six or seven times in on that day?

A. I might have only been in three times on that day.

Q. But how many times were you in, can you remember?

A. No, sir; not exactly. I go in there periodically.

Q. Yet you know that handle was there?

A. Certainly.

Mr. DAVIS.—That's all; that's all for you.

Mr. WARREN.—That is all.

The COURT.—Stand aside.

Now, gentlemen, have you offered all the witnesses here on this boat?

Mr. WARREN.—These are all the witnesses I have from the ship, your Honor.

Mr. DAVIS.—I would like to get some information from counsel about the depositions he is going to apply for. How many other witnesses have you got? **[323]**

The COURT.—The Hutchins case will be continued until Monday morning at nine o'clock. **[324]**

In the District Court of the United States, in and for the Territory of Hawaii.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellees.

Honolulu, H. T., Friday, February 23, 1917.
10 A. M.

Mr. WARREN.—I would like to refer at this time to the case of Hutchins against the "Great Northern," and state by reason of having ascertained that Mr. C. W. Wiley, whose deposition I desire to take, has moved from Portland to Seattle, I have prepared and filed supplementary affidavit stating that fact. I also submit the direct interrogatories proposed.

Mr. DAVIS.—When I get my cross-interrogato-

ries in, your Honor, I will send them on. I will have them in to-day.

The COURT.—All right, gentlemen. **[325]**

In the United States District Court, in and for the Territory of Hawaii.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellees.

Honolulu, H. T., Saturday, February 24, 1917, 11:30 A. M.

Mr. DAVIS.—One cross-interrogatory, No. 10, Mr. Warren objects to.

Mr. WARREN.—My particular objection is regards the word "success." I think it should be changed to "financial success," otherwise the answer may be irresponsive.

Mr. DAVIS.—I stipulate in open court that the cross-interrogatories are satisfactory to me. I move these be sent away by the clerk to-day to the United States Commissioner at Seattle.

The COURT.—Let the order be made.

Mr. WARREN.—To any notary public duly sworn and licensed, or to any commissioner. **[326]**

In the United States District Court, in and for the Territory of Hawaii.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellees.

Honolulu, H. T., Monday, February 26, 1917, 2:00 P. M.

Testimony of Robert B. Booth, for Libelees.

Direct examination of ROBERT B. BOOTH, for libellees, sworn.

Mr. WARREN.—Mr. Booth, you are an officer of F. L. Waldron, Limited, of Honolulu?

A. Yes, sir; I am the treasurer of the company.

Q. Your company are agents for the Great Northern Pacific Steamship Company at this port?

A. Yes, sir.

Q. Did you have a conversation with Mr. C. J. Hutchins at your office in the month of February, 1916, in regard to [327] the surrender by him of his return ticket on the "Great Northern"?

A. Yes, I did.

Q. Will you please state as nearly as you can just when that was and what it was?

Mr. DAVIS.—I object to the evidence as incompetent, irrelevant and immaterial, and not tending to

(Testimony of Robert B. Booth.)

prove or disprove any of the issues in this case.

Mr. WARREN.—The purpose of the question, your Honor, is this: one of the allegations of the complaint as to damage is to the effect that the complainant was by this accident prevented from returning to San Francisco as he had contemplated, and was obliged to remain over in Honolulu to his damage, and I want to show a conversation between himself and the company at the time of the return bearing directly on the point of the reason for his making that change.

The COURT.—The testimony is all right; overrule the objection.

Mr. DAVIS.—Kindly allow me an exception, your Honor.

The COURT.—Yes, I allow the exception; proceed.

Mr. WARREN.—Answer, Mr. Booth; when was it and what was it, as near as you can remember.

A. As near as I can recollect, Mr. Hutchins came into our office a day or two, somewheres around there after the "Great Northern" arrived.

Q. February 19, 1916?

A. I think she arrived on the 20th, the 19th or 20th—I have forgotten now—but it was a day or so after the boat arrived that Mr. Hutchins came in the office, I think with [328] his wife, if I remember correctly. We were then in our old quarters, 816 Fort Street, and I have known him for a good many years, and I was sympathizing with him for his pilikia, and he said he wanted to cash his tickets, his

(Testimony of Robert B. Booth.)

return trip tickets, he wanted to cash them in the office, and it was either on a holiday, either Washington's Birthday or else,—I believe it was Washington's Birthday, or on a Saturday afternoon, anyhow the banks were closed, I think, but to make a long story short I gave Mr. Hutchins $75.00 and took an I. O. U. for it, he wanted to go to Hilo, and I said when you get back you will get the tickets all right and everything was satisfactory, but when I—as near as I can recollect now, when I asked him why he cashed his tickets he gave me to understand—

Mr. DAVIS.—I object to what he understood, it is what he said.

The COURT.—I sustain the objection, just state what he said.

A. That he had some business to transact, that he couldn't get through in time to go back on the "Great Northern" that trip, that was the substance of it.

Mr. WARREN.—In that conversation, did the subject of his accident or injury come in for discussion at all, further than you have mentioned?

A. I don't recollect now, I know naturally I spoke to him about his accident, because it was the first time I had seen him after his return and I naturally spoke about his accident.

Q. What reply if any did he make to that comment, how did he reply? [329]

A. He told me he slipped in the bath-room and dislocated it, as I understood it at the time, dislocated his shoulder.

Q. Do you recollect whether he had his arm

(Testimony of Robert B. Booth.)

wrapped up at the time?

A. I think at that time he had a black silk handkerchief, his arm in a black—I wouldn't be sure about that.

Q. You have given that conversation substantially as it occurred?

A. Yes, sir, as near as I can recollect.

Cross-examination of ROBERT B. BOOTH.

Mr. DAVIS.—What time did the "Great Northern" arrive here on that trip in February, 1916?

A. I think she arrived on the—I am not sure, but I think she arrived on the 21st.

Q. Yes. A. Is that right?

Q. Well, I think it is. That is as near as you can remember?

A. Yes, I think the "Northern Pacific" arrived on the 22d, the following day.

Q. Now, when did you say that conversation was held?

A. It was very soon afterwards; it might have been the following day. I am under the impression that it was on Washington's Birthday.

Q. Well, I want to know are you positive?

A. I couldn't tell you any more than I am telling you now, as to whether it was the following day or Washington's [330] Birthday.

Q. Will you undertake to swear positively it was not a week afterwards?

A. Certainly I will not.

Q. And do you know whether or not this accident was—that this accident was the cause of Mr.

(Testimony of Robert B. Booth.)

Hutchins' delay so that he couldn't return?

A. Do I know that?

Q. Yes.

A. Do I know that the accident was the cause of his delay?

Q. Will you swear it was not because of this accident that he could not return on the "Great Northern" to use his return ticket—wait until I ask the question. Read the question, please.

(Last question read.)

A. From the conversation I had with Mr. Hutchins, I gathered that it was business and not his accident that kept him over, the reason he couldn't make his return on the "Great Northern."

Q. And will you swear positively that was the sole reason? A. I am telling you what he told me.

Q. I am asking you will you swear positively—

A. How can I swear positively to something I don't know anything about. I don't know whether his accident kept him over here or not.

Q. Then say so; that's what I am asking you.

A. It is not a fair question.

Q. That is not for you to judge. It is for the Judge of this court to decide and not for you to say it is not a fair [331] question. How long have you been connected with Waldron and Company?

A. Ever since its incorporation, January 2, 1912.

Q. How old are you? A. Thirty-nine.

Q. Yes; had you known Mr. Hutchins previously to this time? A. A number of years.

Q. How long have you been in Honolulu?

(Testimony of Robert B. Booth.)

A. Nineteen years.

Q. You talked to Mr. Hutchins about this broken —dislocated shoulder, as you call it, did you?

A. Why certainly.

Q. Yes, and didn't Mr. Hutchins tell you that he had to go and see the doctors here and have it bound up and attended to? A. I don't remember.

Q. You don't remember that? A. No.

Q. You don't know whether or not that took place, that conversation I have—

A. That he had to go to the doctors to have it attended to?

Q. Yes. A. No, I couldn't swear to that.

Q. But it might have taken place? A. Yes.

Q. And did he also say to you, that having had to get medical and surgical attendance that he couldn't possibly go back on the "Great Northern"?

A. I don't remember that.

Q. Will you swear he did not tell you that?

A. I am on my oath, and to the best of my knowledge and belief and to the best of my recollection he didn't tell me that. [332]

Q. Will you swear he didn't? Yes or no. You can't? I would like to get an answer, yes or no, did he tell you that—

A. Mr. Davis, the dates are so far back I certainly cannot swear to anything like that any more than I could have sworn a little while ago, that it was because of his accident that he was kept here.

Q. Yes, and you won't swear that he told you that at the time? A. No, sir.

(Testimony of Robert B. Booth.)

Mr. DAVIS.—That's all.

Redirect Examination of ROBERT B. BOOTH.

Mr. WARREN.—Have you the slightest recollection of such a conversation having taken place between yourself and Mr. Hutchins?

A. I don't remember it.

Q. But the conversation you testified to on direct examination you remember very clearly?

Mr. DAVIS.—I submit that is leading, and object to it on the grounds that it is leading.

The COURT.—It is leading.

Mr. WARREN.—If any such a conversation had taken place do you feel confident that you would recall it?

Mr. DAVIS.—I submit that is not an interrogatory, that the word if is never allowed in an interrogatory unless for explanatory purposes and that it is not a proper [333] interrogatory to propound to the witness on redirect examination and I object to the form of the question.

The COURT.—It is really objectionable on those grounds.

Mr. WARREN.—I have no further questions, your Honor.

Mr. DAVIS.—That is all. [334]

Testimony of Frederick Lamb, for Libelees.

Direct Examination of FREDERICK LAMB, for libellees, sworn.

Mr. WARREN.—Your name, please.

A. Frederick Lamb.

(Testimony of Frederick Lamb.)

Q. Mr. Lamb, were you present at a conversation between Mr. C. J. Hutchins and Mr. Robert B. Booth,—I withdraw that and will ask you where you are employed, Mr. Lamb.

A. F. L. Waldron, Limited.

Q. For how long?

A. Oh, about a year and a half.

Q. Are you connected with the ticket department of that company for the Great Northern Pacific Steamship Company? A. Yes, sir.

Q. Were you present at a conversation between Mr. C. J. Hutchins and Mr. Booth in your office in the month of February, 1916, regarding the return coupon of Mr. Hutchins' ticket on the "Great Northern"? A. Yes, sir; I was.

Q. Will you please state what you heard of that conversation?

A. Well, he came in there, I think it was either on a holiday or a Saturday afternoon, probably on a Saturday afternoon,—probably it was a holiday, a legal holiday, or a Saturday afternoon, because the banks were closed, I think, however, it was a Saturday afternoon, for the simple reason that I was going away to Hilo, and he turned in his tickets to Mr. Booth and he was joking with Mr. Booth at the time and got a loan from him of $75.00 on the return ticket. I thought at first it was rather peculiar he didn't ask [335] for the return money, but instead of that he took $75.00 from Mr. Booth and Mr. Booth handed me the I. O. U. for the $75.00 and I

(Testimony of Frederick Lamb.)

give him the cash. The two were joking together at the time.

Q. That trip to Hilo was on the "Northern Pacific"?

A. Yes, that was it. It was on Saturday, on the "Northern Pacific." That was Saturday afternoon when he came into the office and turned in the tickets and didn't ask for any cash, and Mr. Booth handed me the two tickets and said, "These are for refund," and they were joking together, and Mr. Booth says, "Give him $75.00 and I will give you his I. O. U.," and he handed me the I. O. U., and we didn't hear any more.

Q. Mr. Booth said to you to give him $75.00?

A. Yes, and I handed him $75.00 and he turned it over to Mr. Hutchins, and they continued laughing and joking together. I didn't hear anything that took place, but it seemed to me,—I wouldn't like to swear to any actual statements for the simple reason that I can't tell exactly the words that took place.

Q. I did not ask you to give the exact words of the conversation. State the substance as near as you can.

A. Well, the substance appeared to me—

Mr. DAVIS.—I submit that is incompetent.

Mr. WARREN.—Just as near as you can remember the substance of what he said.

A. Well, the substance of it was this, that he wasn't returning because he had some business here or because his business wouldn't be finished by that day. [336]

(Testimony of Frederick Lamb.)

Mr. DAVIS.—If your Honor please, I move to strike the answer out; it is the conclusion of the witness and therefore is not proper and competent evidence.

The COURT.—Of course, the witness does not undertake to repeat the words. It is legitimate testimony for him to give the substance of the conversation according to his best recollection.

A. Both mean the same. If you like, I can strike out the "or" or cut the first, it is immaterial.

Mr. DAVIS.—The Judge will decide that, not you.

The COURT.—Objection overruled.

Mr. DAVIS.—To which ruling I respectfully except.

The COURT.—Exception allowed.

Mr. WARREN.—Is that all the conversation you remember? A. Yes.

Cross-examination of FREDERICK LAMB.

Mr. DAVIS.—Were you also sympathizing with Mr. Hutchins?

A. I didn't know, I think, until a couple of months afterwards about this accident.

Q. You can't remember the exact conversation that took place, it being so long ago?

A. No, I cannot.

Q. How old are you? A. 40.

Q. How long have you been in the employ of Waldron and Company, Limited? [337]

A. One year and a half.

Q. And did Mr. Hutchins,—did you overhear all the conversation? A. No, sir, I did not.

(Testimony of Frederick Lamb.)

Q. No. Did Mr. Hutchins—did you hear Mr. Hutchins say to the last witness that he was delayed in Honolulu by reason of having to get medical and surgical attention in consequence of the accident sustained by him on the steamship "Great Northern" on the 18th of February, 1916?

A. No, sir, I didn't. I didn't know anything about the accident at that time.

Q. Will you undertake to say that he did not tell the last witness that and you not hear it?

A. I didn't hear anything; I wasn't aware of it.

Q. Will you state that he did not tell him that?

A. I couldn't state. I told you just now that I didn't hear all the conversation.

Mr. DAVIS.—Exactly; that's all, Witness.

Mr. WARREN.—That's all.

The COURT.—Stand aside.

In this matter, counsel explains that Doctor Macadory is here and will be here this afternoon. We will postpone further hearing until 3:30 P. M. Take a recess until 3:30.

AFTER RECESS.

Mr. DAVIS.—I want to produce another witness, not exactly in the nature of rebuttal, but it is rebuttal testimony in a way.

The COURT.—All right. [338]

Testimony of Alfred Hackett, for Libelant (in Rebuttal).

Direct Examination of ALFRED HACKETT, for libellant, in rebuttal, sworn.

Mr. DAVIS.—What is your occupation, Mr. Hackett?

A. I am chief steward of the "Sierra," of the Oceanic Steamship Company.

Q. Is she a steamship plying between San Francisco and Sydney, Australia, via Honolulu?

A. Yes, sir.

Q. Carry United States' mails? A. Yes, sir.

Q. How many first-class passengers do you carry, Chief Steward?

A. Our accommodations are for two hundred and ten first-class passengers, eighty-three second cabin and twenty-eight steerage.

Q. How long have you been in the steamship business? A. With the Oceanic Company?

Q. Or any other company?

A. Thirty years with this company.

Q. Been thirty years with this company?

A. Yes, sir.

Q. What positions have you occupied in connection with this steamship company?

A. Storekeeper, second steward, and chief steward.

Q. And how long have you been chief steward, Mr. Hackett? A. Eighteen—nineteen years.

Q. Are you familiar with the internal arrange-

(Testimony of Alfred Hackett.)

ments of this Ocean Steamship or other steamship with reference to bathing facilities for passengers on board? [339] A. Yes, sir.

Q. And your experience has covered a period of how many years? A. Thirty years.

Q. Yes; now where are those baths situated, the shower-baths? A. Two on the port side forward.

Q. Will you please describe to the Court how they are fitted up?

Mr. WARREN.—Just a moment. I object to this, your Honor, it not being relevant and not material in the case what a particular individual vessel is fitted up with. I could go back and cite you the "Mauritania" and the "Lusitania" and a few others that are fitted up in other ways.

The COURT.—I think the objection is well taken.

Mr. DAVIS.—This is to contradict the evidence of Mr. Morris, to rebut his testimony.

Mr. WARREN.—My objection is that is confined to a particular single steamer, not to steamers generally, and if he is after an opinion on safety, I wish to cross-examine the witness.

Mr. DAVIS.—Have you been on board the "Sonoma" also?

A. I was steward for eight years.

Q. And how is she fitted up?

A. Exactly the same.

Q. Been on any other ocean steamer?

A. The "Alameda," "Sierra," "Australia."

Q. And how are they fitted up with reference to baths?

(Testimony of Alfred Hackett.)

A. The bath-rooms were different in those, no shower-baths, just two bath-rooms.

Q. Been on any other steamers on which there are bath-rooms? A. Yes. [340]

Q. That's what I mean, how many?

A. Union Steamship Company, but I never took any special notice.

Q. You have been on board and seen the bathing facilities? A. Yes.

Q. With reference as to what measures that have been taken on board the "Sonoma" as to safety in that shower-bath on board of her, just describe that to the Court.

Mr. WARREN.—The same objection, your Honor. It is not competent to describe what is on a single individual vessel. The only way in which Mr. Morris and others testified as witnesses in this case was their general familiarity with the subject by *stury,* taking vessels generally.

Mr. DAVIS.—He took the "Great Northern," your Honor.

The COURT.—I don't think it is proper to enquire as to any particular equipment except the one which is in question in this case, but I will permit you to prove what precautions are taken, if any, generally, but I don't care to confine it to one ship. What knowledge he has of any precautions taken for the safety of passengers, taking shower-baths generally.

Mr. DAVIS.—What precautions are taken on the Oceanic Line steamers which have shower-baths on?

(Testimony of Alfred Hackett.)

I am not speaking of any particular ship, but generally, what precautions are taken so as to ensure the safety of passengers using the shower-baths on board said vessels?

Mr. WARREN.—The same objection, your Honor, and further that this is going to call for more than a description of a [341] single vessels, or two or three vessels which he has named, two vessels on which there are shower-baths.

Mr. DAVIS.—Three.

Mr. WARREN.—As I recollect it, two. I would like to go further into the question of his qualifications.

The COURT.—I will admit the proof.

(Last question read.)

A. Our shower-baths are about thirty-six inches square, marble, and enclosed with a wooden latticed door, and there is a wooden grating on the bottom to protect passengers from slipping, and outside of the bath-room which—outside of the bath-room in a recess which we keep mats or bath-towels on for the safety of passengers to stop them from slipping. We have the same precautions in all of our bath-rooms. The bath-rooms have rails which passengers can hang on, and we have wooden gratings, always a bath-mat or a wooden grating to protect them so they won't slip.

Mr. DAVIS.—Mr. Hackett, look at these photographs. This is a photograph of the shower-bath on the "Great Northern." The bottom of the basin is of marble and that center piece there, what is that,

(Testimony of Alfred Hackett.)

Mr. Warren, that circle inside?

Mr. WARREN.—Nickeled brass, I think.

Mr. DAVIS.—That little round circle being of nickeled brass. How does that compare with wood as to safety?

Mr. WARREN.—Just a moment. Now, we are getting a matter of opinion, and I submit the witness is not qualified to give opinions. He is supposed to be describing what is on certain vessels he has travelled on. If he is going to [342] give opinions I am going to cross-examine him on qualifications.

Mr. DAVIS.—If your Honor wants to do that, I am perfectly willing.

The COURT.—All right, cross-examine him, Mr. Warren.

Mr. WARREN.—How many of these vessels, Mr. Hackett, the "Sonoma," "Ventura"—

A. No; the "Sonoma," "Alameda," "Sierra," the "Gelandu," when she was running out here, and the "Australia." When they first run out I made two trips in each ship and I joined the "Alameda."

Q. Did you mention the "Mariposa"?

A. I have not been on the "Mariposa," no, sir.

Q. How many of these vessels had shower-rooms?

A. The two I have been on, the "Sierra" and the "Sonoma."

Q. The "Sierra" and the "Sonoma"?

A. Yes, sir.

Q. And these two are the ones where you have made your observations as to shower-bath construction?

(Testimony of Alfred Hackett.)

A. Because I had charge of them, and I superintended the whole of that department. That comes on me naturally in the steward's department.

Q. These are sister vessels, are they not?

A. Yes, sir.

Q. Built at the same time by the same company?

A. Yes, sir.

Q. In all respects sister ships?

A. Yes, the three of them.

Q. You have also mentioned several other vessels but on none of the others have there been shower-rooms.

A. No, the shower was over in the bath-tub in the bath-room, [343] like we have in our bath-rooms.

Q. Did they have the ordinary white porcelain bath-tub?

A. The ordinary white porcelain tub; yes, sir.

Q. And you say as far as the other vessels are concerned that you may have visited you paid no particular attention to their showers?

A. No, sir; no particular attention at all.

Q. Have you inspected any vessels of the tonnage, say, of the "Great Northern," in regard to bathing facilities?

A. I have never been on board these ships.

Q. When were the "Sierra" and "Sonoma" built?

A. The "Sonoma" came out first in 1890, and the—no, the "Sierra" came out in 1890, and the "Sonoma" followed.

Q. In 1900?

A. In 1900; that was it. The "Sonoma" followed

(Testimony of Alfred Hackett.)

in 1901. They are sixteen years old, I know; sixteen years since they were built.

Q. Mr. Nymen was chief engineer, wasn't he?

A. He was on the "Ventura."

Q. Other vessels than these two, do you know of any others?

A. Yes, sir; I have been aboard the "Ventura."

Q. You have seen that, have you?

A. Yes, sir; I have been on board several times.

Q. You say you have been thirty-six years with the Oceanic Steamship Company?

A. Thirty years.

Q. And have you served on the Atlantic?

A. I have crossed the Atlantic several times.

Q. Do you know anything about the bathing equipments or [344] facilities on Atlantic steamers?

A. I haven't been on the Atlantic for thirty-five years.

Q. Have you made a study of the construction of vessels in any way?

A. No, except in my own department.

Q. Your duties in your own department are to see that the place is kept properly clean?

A. That's right, the equipment, the kitchen, the linen and so forth, and the silver.

Q. And what?

A. The equipment, the general equipment of the stewards' department, that is, the ice-house, butcher-shop, steam-rooms, kitchen, baker-shop.

Q. You are not responsible for the construction or design of the shower equipment?

(Testimony of Alfred Hackett.)

A. Not at all; no, sir.

Q. Is the responsibility on you in any way to make any changes or alterations of any kind?

A. Not without instructions from the head office.

Q. You have not studied that subject at all?

A. No, only that I know that everything is satisfactory as far as our ship has been concerned. We never had any accident or any trouble. If there is any leakage or anything of that kind, we bill to the engineers that they might rectify it, that is, steam-pipes, showers, and so forth.

Q. So that the most you could do now would be to tell us the conditions which had existed on that vessel, your vessel?

A. That's it; yes, sir. [345]

Mr. WARREN.—I submit that the witness is not qualified to pass as an expert upon construction methods or equipment or to give an opinion upon safety.

Mr. DAVIS.—As chief steward of the "Sonoma" is it your duty to see that these are kept clean and so forth? A. Yes, sir.

Q. And you have charge of that particular part of the ship? A. Yes, sir.

Q. Now, have you taken baths on board the Atlantic steamers on which you were on board?

A. I never was on the Atlantic.

Q. I thought you were on the Atlantic some years ago.

A. I crossed, but was not employed on the Atlantic.

(Testimony of Alfred Hackett.)

Q. What?

A. I was not employed, I was a passenger.

Q. You were a passenger on Atlantic steamers?

A. Yes, sir.

Q. Know anything about the baths there?

A. Very little, the ordinary bath, but that is nearly forty years ago.

Q. But you have been on other steamships, also, you have visited other steamships within recent years, plying in the Pacific, have you not?

A. Yes, sir.

Q. Which ones?

A. Several, in the "Sydney," the "Mongolia" and several others. I can't just exactly think of the names.

Q. How many?

A. I just wanted merely to see the steward and pass the time [346] of day with him.

Q. How many, Mr. Hackett?

A. I suppose a half a dozen.

Q. Did you go to see the bath-rooms on these vessels? A. It didn't appeal to me,

Q. But at all events you have been thirty years in this Oceanic line?

A. Yes, sir.

Mr. DAVIS.—Now, I submit the witness is competent to give an opinion and to compare the two bath-rooms just like he did with other ships, he opened the door for it wide, Mr. Warren did, he wanted to know how other ships are fitted out, your Honor.

(Testimony of Alfred Hackett.)

The COURT.—You need not argue the matter. I am going to hear the testimony.

Mr. WARREN.—Allow me to note the ruling as error, your Honor.

The COURT.—Exception allowed.

I permit him to make a comparison as to safety between a bath with and without a wooden flooring and mats that go with them.

Mr. DAVIS.—As in those photographs.

Mr. WARREN.—That is objected to.

The COURT.—Read the question.

(Last question read as follows: By Mr. DAVIS.—"Mr. Hackett, look at these photographs. This is a photograph of the shower-bath on the 'Great Northern.' The bottom of the basin is of marble and that center piece there, what is that, Mr. Warren, that circle inside?" Mr. WARREN.—"Nickeled brass, I believe." Mr. DAVIS.—"That little round [347] circle being of nickeled brass. How does that compare with wood as to safety?")

Mr. WARREN.—That question calls for his opinion, "How does it compare?" I state further that the question does not correctly state or describe that bath there with reference to it having a marble floor, it being porcelain, and I object.

Mr. DAVIS.—I will ask to amend the question, it being porcelain. I ask your Honor's ruling.

Mr. WARREN.—I further object to the question on the ground that it does not appear there is sufficient in the knowledge of the witness in stating to him any question or giving any photographs as to

(Testimony of Alfred Hackett.)

enable him to give an expert opinion of the safety of the bath shown in that photograph.

The COURT.—I think that might be the opinion of any witness who might have knowledge of the facts from his experience, and therefore will allow him to state his—state the comparison between the two as to safety.

Mr. DAVIS.—Now, from the question, Mr. Hackett, as put, from the question as put and from the photograph, how do the two baths compare with reference to safety?

Mr. WARREN.—Will your Honor pardon one more interruption? It does not appear that the witness has ever seen or heard of a bath such as is shown in the picture there.

The COURT.—A bath such as is represented in the picture.

A. Your Honor, our baths are exactly a facsimile of this one, exactly, the only difference being for the safety of the passengers, we keep a wooden grating on top of this marble and on the outside here in this partition here we also keep [348] a wooden grating, and we have a bath-towel so that a passenger stepping out from this bath into the dressing compartment is not liable to slip, and there is a handle to hold on.

The COURT.—Where?

A. Right in the bath—outside the bath-room when he comes out from the shower, and there is a wooden door, a lattice door enclosed there, which is impos-

(Testimony of Alfred Hackett.)

sible for him in case of bad weather to be thrown out of this shower-bath.

Mr. DAVIS.—Then how do the two of them compare as to safety?

Mr. WARREN.—I object to the question, it calls for an opinion of the witness.

Mr. DAVIS.—I submit it is proper and competent testimony, without further argument.

The COURT.—As a matter of fact, the witness has practically answered the question already, I overrule the objection.

Mr. WARREN.—Which we assign as error, your Honor.

Mr. DAVIS.—Answer the question, please, now.

A. In my opinion and my experience, a bath of this description without any protection for a passenger, that is, without any wooden grating or a foot bath-towel to stand on, he is liable to slip. There is evidently no handle or anything you can get hold of here, and we protect our passengers by having a wooden grating bath-mat, and also on the outside dressing-room when he comes out of the shower he stands on this platform of wood with a bath-towel on it to prevent him from slipping while he is [349] wiping himself and dressing himself.

Mr. WARREN.—I object to that as opinion.

The COURT.—It is a question of whether or not this bath is safe.

Mr. DAVIS.—Is that bath as described to you by me as is that as represented in the photographs, do you in your opinion consider that safe?

(Testimony of Alfred Hackett.)

A. Not in this condition as it is now here, certainly not.

Mr. DAVIS.—Take the witness.

Cross-examination of ALFRED HACKETT.

Mr. WARREN.—Mr. Hackett, how long have you used these wooden gratings on the floor?

A. Ever since I knew the Oceanic Steamship Company.

Q. Always?

A. Always; yes, sir. Go right down aboard the ship now and you will see them in every bath-room and in the shower-baths.

Q. Do you know of any time that passengers have used these shower-rooms without this grating or flooring?

A. Not to my knowledge. Of course, I am not there when a passenger is bathing, but there is a man to look after it and he is cautioned to keep them in their places.

Q. So far as your experience is concerned these gratings have always been used? [350]

A. Yes, sir.

Q. Do you know of any passengers taking a shower without these being put down?

A. They are always down. If they are standing up in the corner the boy puts them down in when the passengers calls for showers.

Q. What experience have you had on vessels then where gratings were not used? A. Sir?

Q. Have you had experience on any vessel where a wooden grating was not on the floor?

(Testimony of Alfred Hackett.)

A. No, I told you I only been on the Oceanic Steamship Company and they insist it is part of my duty to look after that.

Q. So you have never known of a case of a person to slip on your vessels in these shower-rooms with the boards being up? A. No, sir.

Q. Then what practical experience or observation have you had of the use of these shower-rooms without boards,—any at all?

A. We never use them without boards.

Q. How, then—on any of these other vessels you have inspected you have not seen shower-rooms of that kind?

A. No, I told you before I had not, the bath-rooms or anything else on board a ship does not interest me at all.

Mr. WARREN.—That is all.

The COURT.—I would like to understand the witness exactly. If I understood you, you said that the shower-baths on the ship you are on is exactly like that? [351]

A. Yes, sir; almost facsimile to this.

Q. Basin and all?

A. Yes, sir; only our pipe comes up here instead of this.

Mr. WARREN.—The witness is indicating a pipe going up the back wall instead of the side wall.

A. Yes, it comes up from the back. Ours is not quite as deep as that, your Honor; the basin is not quite as deep. Then we have a wooden grating that fits snugly in that.

(Testimony of Alfred Hackett.)

The COURT.—A wooden grating?

A. Yes, sir; a wooden grating, and it fits in there for the safety of the passenger. That is marble, and sometimes when you get your foot in salt water you are going to slip, you can't help it, particularly in bad weather, and we have a door that closes here, a wooden door, that protects the passenger from falling out in case the ship pitches.

Q. To prevent slipping, your baths have wooden gratings in the bottom?

A. Yes, sir; and when he steps out of here into the dressing-room there is another long grating, there is a long grating and on that grating is a bath towel or a bath mat, and if the steward can't get a bath mat he lays a bath towel and the passenger stands on that to dry himself and dress himself to prevent himself from slipping. Our floor is marble also, that's the reason we use these things.

Q. Mr. Hackett, how long has that device been in use, did you say, that mat? [352]

A. Sixteen years, since the ships came out, your Honor.

The COURT.—That is all.

Adjourn court until 10 o'clock to-morrow morning. [353]

In the United States District Court, in and for the Territory of Hawaii.

CLINTON JAMES HUTCHINS,

Libellant,

vs.

The American Steamship "GREAT NORTHERN," etc.,

Libellees.

Honolulu, H. T., Tuesday, February 27, 1917.
10:00 A. M.

Testimony of Dr. Robert J. McAdory, for Libelees.

Direct Examination of Dr. ROBERT J. McADORY, for libellees, sworn.

Mr. WARREN.—Give your full name, please, Doctor.

A. Robert J. McAdory.

Q. Your age? A. Forty-five.

Q. Your present residence? A. Kamuela.

Q. On the island of Hawaii? A. Hawaii.

Q. What is your business or profession?

A. Physician and surgeon.

Q. How long have you been a physician and surgeon? [354] A. Since 1897.

Q. Since 1897? A. About twenty years.

Q. In what states have you been licensed to practice medicine and surgery?

A. The State of California, Arizona, and in the District of Columbia and the Territory of Hawaii.

(Testimony of Dr. Robert J. McAdory.)

Q. What experience have you had as a surgeon or doctor on board of ocean-going steamships?

A. During intervals during the past three years I have been surgeon with the Toyo Kisen Kaisha and the American Hawaii.

Q. The American-Hawaii Steamship Company?

A. The American-Hawaii Steamship Company and the United Fruit Company out of New York, and the Great Northern Pacific Steamship Company.

Q. Will you name some of the vessels on which you have served as a doctor?

Mr. DAVIS.—I submit that it is incompetent, irrelevant and immaterial on which vessels he served. There must be an end to this case, your Honor, and it seems to me that it takes up time unnecessarily, as I said before.

The COURT.—Well, we will soon be through with it.

Mr. DAVIS.—I submit he has questioned far enough. He is shown to have graduated and licensed to practice in these states—

The COURT.—He is entitled to give his experience fully. I overrule the objection. Go ahead, Doctor.

A. During my experience in the army,—I served on the hospital ship "Relief" as one of the surgeons, and on the transport "Valencia," and on the transport "Grant," and on the transport [355] "Logan." Subsequently on the "Nippon Maru" of the Toyo Kisen Kaisha, and on the American-Hawaiian

(Testimony of Dr. Robert J. McAdory.)

steamer "Honolulan" between San Francisco and New York via the Panama Canal, when she was in the passenger service, on the "Sixola" of the United Fruit Company, sailing to Cuba and Central America, and last on the "Great Northern," sailing between San Francisco and Honolulu.

Mr. WARREN.—You mentioned service in the army; how long were you in the service?

A. About four and a half years.

Q. In the month of February of 1916 were you the surgeon on board the Great Northern Pacific Steamship Company's steamer "Great Northern"?

A. I was.

Q. When were you engaged to serve on that vessel?

A. I don't know the exact dates, but it was a few days prior to her first sailing, on her first series of voyages down here.

Q. On the Honolulu run?

A. Yes, on the Honolulu run.

Q. Did you serve on that vessel during her entire run to Honolulu? A. I did.

Q. Before she was put back on the coast run?

A. Before she was put back on the coast run.

Q. Do you know, Mr.—oh, pardon me. I want to refer further to the matter of your engagement and ask you if you will please state from your own personal knowledge the arrangement which was made between you and the steamship company [356] when you were engaged, and what investigation was made, to your own knowledge, by the company's

(Testimony of Dr. Robert J. McAdory.)

representative as to your qualifications and experience.

A. I made application for the position of physician and surgeon on the S. S. "Great Northern" when I learned she was going on that run, and the application was made to the marine superintendent.

Q. Who was that?

A. C. W. Wiley. I saw Mr. C. W. Cooke, the marine superintendent of the American-Hawaiian Company in San Francisco, and I showed Mr. Wiley letters from the American-Hawaiian Company, the Toyo Kisen Kaisha and the Medical Society of the State of California. I was then appointed, Mr. Wiley saying he would try me out for one trip. We are only appointed for one trip, therefore we signed on, and at the expiration of that trip our service terminated and we have then to re-sign on after that. Each trip makes a distinct ending of our employment. The assumption is at the end of your voyage you sign on for subsequent trips.

Q. Where did you first see Mr. Wiley about that matter?

A. I saw him on board the S. S. "Great Northern" in the chief engineer's room.

Q. Who else was present at that time?

A. The chief engineer.

Q. Mr.? A. Mr. John Morris.

Q. When did you show Mr. Wiley the letters and certificates you have referred to?

A. That was at the Palace Hotel. [357]

Q. Please tell us first,—pardon my interrupting

(Testimony of Dr. Robert J. McAdory.)

you,—just what transpired at that meeting when Mr. Morris was present, how much was said there.

A. When I first saw Mr. Wiley he was in close consultation with Mr. Morris upon some ship matters, and was very busy. He said he had not taken the matter up before, at that time there were several applicants and he would consider it later on. My interview with him then lasted scarcely a minute. I waited several days and then called again on Mr. Wiley. About the only place he could be seen was down on the dock, at the ship. I saw him again in Mr. Morris' room, and asked him if he had done anything about it, and he said he would take the matter up that afternoon if I would come to see him at the hotel and discuss it. I met him about five o'clock in the afternoon at the Palace Hotel and showed him these letters I had, and he said, "Well, I will try you out for one voyage, consider the matter closed." That conversation lasted only, say, long enough to take him to say what I have said, and to read these letters which I showed him.

Q. Have you with you these letters which you showed him at that time?

A. I think I have some of them.

Q. Will you produce them, please?

A. I think some of my things have gotten misplaced. I think those are all. How many letters are there there, Mr. Warren, three?

Mr. WARREN.—Three.

Q. Where was it you showed these papers to Mr. Wiley, at the [358] ship or at the hotel?

(Testimony of Dr. Robert J. McAdory.)

A. At the hotel, the Palace Hotel.

Mr. DAVIS.—I object to the introduction of this letter.

Mr. WARREN.—Have you any objection, Doctor, to me filing these and later withdrawing them and returning them to you?

A. None whatever.

Mr. WARREN.—I offer in evidence, your Honor, three letters which have been produced by the witness which I will identify as follows:

The first is a letter on the paper of the Toyo Kisen Kaisha, addressed To Whom It May Concern, dated San Francisco, November 11, 1914, and signed by W. H. Avery, assistant general manager.

The second, a letter on the paper of the Medical Society of the State of California, dated at San Francisco, November 12, 1914, addressed To Whom It May Concern, and signed by Philip Mills Jones, Secretary and Editor.

The third, a letter on the paper of the American Hawaiian Steamship Company, dated August 25, 1915, addressed, To Whom It May Concern, and signed by E. Anderson, as master of the steamer "Honolulan," as being the documents which were submitted by the Doctor to the steamship company at the time of his engagement indicating the qualifications which were taken into consideration when the engagement was made.

Mr. DAVIS.—I presume these signatures are all right but they have not been proven in the first place, and in the second place the question involved in this

(Testimony of Dr. Robert J. McAdory.)

case is what [359] treatment the Doctor gave Mr. Hutchins. It doesn't make any difference if he had the skill and knowledge of the Mayo brothers if he didn't give any attention to the passenger on the steamer. I don't know what this means, this letter doesn't say anything about his qualifications, doesn't pass on it in any way, shape or form. So far as the Medical Society is concerned, they may be the only ones who know anything about his qualifications. The letter signed by Mr. Avery, manager of the Toyo Kisen Kaisha, he would have, no—I don't suppose that he ever treated Mr. Avery, and I don't suppose Mr. Avery knew anything about him, he is not a medical man, so how can he judge of the qualifications of Doctor McAdory. It is absolutely impossible, so that the evidence would be incompetent, irrelevant and immaterial from that standpoint as far as Mr. Avery is concerned. As far as the American Hawaiian Steamship Company is concerned, and Anderson, the master, I don't know what technical knowledge he could have unless he saw him perform operations and do something on the trips. He says, "Your services are entirely satisfactory and only terminated when the company discontinued,"—it's a nice letter, all right, as far as that goes, but it appears to me that he wouldn't be competent to pass upon the qualifications of Doctor McAdory and for this reason I submit the evidence is incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues in this case, and the signatures have not been proven.

(Testimony of Dr. Robert J. McAdory.)

The COURT.—There is no need to argue the matter. Doctor [360] McAdory testifies these are the same letters that he showed to Mr. Wiley at the time the contract was made to employ him and other matters on which he acted. They affect the question of whether or not he exercised due care in the employment of Doctor McAdory. I will admit the testimony on that point.

Mr. WARREN.—That is the purpose of these letters?

Mr. DAVIS.—To which ruling I respectfully except.

The COURT.—Exception allowed.

Mr. WARREN.—I would like to ask you, Doctor, which or how many of these three letters were shown by you to Mr. Wiley? A. All of them.

Q. You personally know all of these gentlemen who have signed these letters? A. Yes, sir.

Mr. WARREN.—I offer them in evidence.

The COURT.—The letters will be admitted in evidence.

(Marked Libellees' Exhibits 2, 3 and 4.)

Mr. WARREN.—Do you know the signatures of these different gentlemen, Doctor?

A. Yes.

Q. You were a moment ago indicating a desire to speak to me; was that in connection with these letters? A. Yes.

Q. Can you state anything further concerning these letters which you have not stated, which has to

(Testimony of Dr. Robert J. McAdory.)

do with the arrangement between you and Mr. Wiley?

A. I don't know that this is relevant or not. Judge Davis spoke of Captain Anderson, for example, not being [361] qualified.

Mr. DAVIS.—It's incompetent, irrelevant and immaterial, and I object to the evidence.

Mr. WARREN.—As master?

Mr. DAVIS.—As master, yes.

Mr. WARREN.—Did Mr. Wiley tell you how many applicants there were for that position?

Mr. DAVIS.—I object to what Mr. Wiley told him.

The COURT.—That is hearsay.

Mr. WARREN.—Directly, if your Honor, please, in the matter of the engagement.

The COURT.—It would not directly affect the question.

Mr. WARREN.—I submit it would, your Honor, if there were two, three, or four applicants and this man was chosen, it would indicate the consideration of more than one person, and indicate the consideration of at least three persons.

The COURT.—I think it is immaterial.

Mr. WARREN.—Very well, your Honor. The testimony that there were several went in with the objection.

Q. Do you know Mr. Hutchins, the plaintiff in this case? A. I do.

Q. How long have you known him?

A. I think our acquaintance began about 1901,

(Testimony of Dr. Robert J. McAdory.)

somewhere—1901 or 2, when I was living in Honolulu.

Q. What has been the nature of your acquaintance?

A. Well, it has not been an intimate acquaintance; it has been a friendly acquaintance.

Q. How frequently would you see him? [362]

A. That I can't remember definitely. In a place the size of Honolulu ten years ago *and* man would frequently meet their friends about the city, but as to how frequently I—well, my answer would be indefinitely. I subsequently would occasionally see him in San Francisco.

Q. Did you know him—I withdraw that. In your acquaintance with him by what name would you call him?

A. Well, the familiar name we called him was Hutch.

Q. Would you address him as Hutch in your conversation? A. Yes, sir.

Q. Do you recall an occasion when he sustained an injury in the bath-room of the "Great Northern" in February of last year? A. I do.

Q. Please state your first connection with that, when and where you saw him and what you found.

A. It was in the morning, I don't recollect the exact hour, but it was before breakfast, I was called to the bath-room that somebody was injured there. When I arrived I found Mr. Hutchins sitting on a stool gasping and breathing heavily and apparently suffering a good deal of pain. I made no examina-

(Testimony of Dr. Robert J. McAdory.)

tion of him there, but I learned from some bystander or bystanders that he had slipped in the shower-bath and had fallen on his shoulder, so I got him in his room, which was near by, across the alleyway, and I do not recall who was present with the exception of his wife, she was very much shocked when he came in to find he had fallen, and we got him in bed, and about that time [363] another call came for me, a young woman who had been very ill on board, at the point of death, and after getting Mr. Hutchins in bed I first administered a grain of codeine, which in some measure alleviated his pain. He was suffering at the time from some surgical shock.

Q. In what form did you administer that?

A. In little tablets, a half a grain each. Then I went to see this young woman, and found out that her condition was not such that I could leave her very shortly and went back. An interval of probably ten minutes may have elapsed. I returned to Mr. Hutchins' room and found him sitting on a little settee in his room, his wife assisting in dressing him. He had just about got his outer shirt on at the time I arrived and he remarked that he was rather uncomfortable lying down, that he would be more comfortable sitting up, something to that effect, and I at the time gave him a slight examination of the shoulder. I rotated the arm, having in mind the possibility of a fracture there, but owing to the voyage being at the close, or near the close, at that time only a couple of days more or something

(Testimony of Dr. Robert J. McAdory.)

like that, and he was suffering a good deal at the time, I did not care or thought I ought not to subject him to the necessary manipulation and ascertain the absolute condition of the joint at the time, inasmuch as he would shortly be in Hilo, where someone else could take charge of the case, and I knew that whoever that would be he would have to go through the same formality and subject the patient to [364] additional manipulation and unnecessary suffering, and inasmuch as I was able to rotate the arm about in the socket I realized no great harm could come in allowing him to wait for a couple of days and then have the advantage of all that science could afford him in the way of an X-ray picture. Whoever the other doctor was he would first get a picture and then ascertain what the real condition was and then he would do what was necessary. I only thought inasmuch as—from the examination I had made, that he would be reasonably comfortable and safe with the arm in a sling, and being rather a stout man and just coming out from a cold city I did not care to bind him up these last two days and give him all the physical discomfort and such, and that the short time that would elapse would not cause any injury or interfere with subsequent treatment and—

Q. Let me ask you right there, what in your opinion, would be the effect, if any, in allowing the arm to go without immobilizing it for two days?

A. That would all depend upon the character of fracture. If it was an impacted fracture where the bones would act as a splint for themselves, the ends

(Testimony of Dr. Robert J. McAdory.)

being dovetailed into each other, and by that dovetail immobilize it, that is, immobilize the broken ends, there could not be any injury, providing he was leading a quiet life, not subject to any jolts or things of that character, while, on the other hand, if the ends were asunder, it would not be wise to let the broken bone go without immobilizing it [365] because the jagged ends would be tearing into the soft parts at every movement.

Q. Did you at that time, or could you detect any fracture at all in the nature of a break as defined from impact, any broken or split bone?

A. Well, I detected some little clicking that is common in joints due to the little sesamoid, that apparently was the little sesamoid bones that surround the glenoid cavity of the scapula, that is, every joint as we get along in life, there is a little cartilaginous rim there, earlier in life that becomes deposited with lime salts and forms sometimes a bony rim around the rim of the scapula so that—

Q. Well, Doctor, did you move that arm, manipulate it sufficiently to get any definite opinion or clean-cut belief in your own mind at the time—

Mr. DAVIS.—I submit that is leading.

Mr. WARREN.—I have not finished my question.

The COURT.—Don't answer the question until he finishes it. He has not finished it yet. Read the question as far as the interruption goes.

(Last question read.)

Mr. WARREN.— —as to what the injury was?

Mr. DAVIS.—Clearly objectionable, your Honor.

(Testimony of Dr. Robert J. McAdory.)

Just think of that, he is telling him just what to say. He is suggesting an answer.

The COURT.—He can answer either way. Overrule the objection.

Mr. DAVIS.—To which I respectfully except. [366]

The COURT.—Allowed.

Mr. DAVIS.—And assign the same as error.

The COURT.—Answer the question, Doctor.

Mr. WARREN.—You can answer that question yes or no.

A. Did I make?

Q. Did you make such a manipulation or examination as resulted in the belief in your own mind at the time as to what the matter really was, or did you not know what the matter really was?

A. It was not entirely clear in my own mind what the matter was, and for that reason I recommended at the time that as soon as he arrived at Honolulu that he would—he mentioned that he would go to someone and have an X-ray, said he would go and see his friend Doctor Wood, and I said, "That's right; go to your friend, Doctor Wood, and have an X-ray taken and find out definitely what the trouble is."

Q. How long did you remain with Mr. Hutchins when you returned to him that time after attending that call for the other patient?

A. Possibly not longer than five minutes; I saw that he was being dressed.

Q. What did you do?

A. I saw that he was being dressed there and I did

(Testimony of Dr. Robert J. McAdory.)

not wish to detain him any longer, inasmuch as I had given him the examination I did, so I left him in order that his wife might assist attending with the dressing of him. I then went on down to my breakfast and before I had finished Mr. Hutchins appeared and passed by the head of my table and took his seat at the table adjoining, where he was assigned [367] and made some casual remark to me as he passed that he was still on deck, or something to that effect.

Q. What?

A. That he was still on deck, or something to that effect, that he was about, or able to be about.

Q. How often after that did you see him on the rest of the voyage?

A. Well, I saw him several times every day.

Q. Where?

A. On deck sitting in his deck-chair or taking a little exercise around the deck with his wife.

Q. Speaking, now, of the same day on which the accident occurred, can you recall now about how many times you saw him before night?

A. I know I was on deck a great deal, among the passengers. Those that were sick I would stop and chat with them and ask their condition.

Q. Do you know whether or not you did meet him on deck before night, of that day?

A. Well, that is—I cannot answer that in the absolute affirmative. I know that I seen him on deck several times subsequent to the accident.

Q. Did you see him that night?

A. We had a trial on board, a mock divorce, in

(Testimony of Dr. Robert J. McAdory.)

which Mr. Hutchins very ably conducted the case as the judge, and afforded the passengers a great deal of amusement. It lasted a half an hour, I suppose, something like that.

Q. A little louder.

A. The trial lasted about a half an hour, I should judge. That took place after dinner. [368]

Q. Did you notice Mr. Hutchins' actions during that trial? A. I did.

Q. Will you please describe them.

A. Well, he was more or less the center of the amusement of the trial because of his having to sustain or deny the objections, and his playing upon the desk with an improvised gavel for order, and calling for order, and such things as that.

Q. Were you able to detect any indication of pain or suffering being sustained by him during that time, that trial?

A. No, I cannot say that I did.

Q. Was your attention attracted to him particularly?

A. Only so far that I noted that he had his arm held up in a sling, by a large silk handkerchief, and gave it very good support.

Q. Did you after the accident make any calls on him after returning to his room that first time to see how he was getting on or give him attention?

A. After I had examined Mr. Hutchins the last time I saw him in his room the morning of the accident, I advised him to *to* immediately and have an X-ray taken upon his arrival, I did not follow up the

(Testimony of Dr. Robert J. McAdory.)

case very closely, I did not go to his room. The only time I would see him would be either at his meals which he attended regularly, or up on deck, occasionally passing the time of day with him and asking him how he felt.

Q. Now, just give us the substance of any one of those conversations you can recollect.

A. Well, those conversations were very very short. As I [369] say, I passed the time of day, and how does your shoulder feel, and his answer would be one that would always lead me to believe that he was not suffering any unusual pain,—

Q. Without stating your belief from what he said, give us the substance of what he said as nearly as you can recall it, if you cannnot recall his words, then the substance.

A. Well, the substance would be to the effect that he was fairly comfortable.

Q. Did you inquire into that point as to whether he was suffering any particular pain? A. Yes.

Q. What was the conversation about that?

A. Well, it would be difficult for me to give a definite answer to some actual remark that might be passed. The substance of his remark would be to the effect that he was suffering no great pain. If he had been, I would certainly have suggested—

Mr. DAVIS.—I object to what he would have done. What he did do is what we want.

The COURT.—I sustain it.

Mr. WARREN.—After arriving in Honolulu, did you take any further interest in Mr. Hutchins' case?

(Testimony of Dr. Robert J. McAdory.)

A. I saw Mr. Hutchins several times after arrival, but particularly to get the ship's report which I had deferred taking until I could learn of the results of the X-ray, the reports we take of all accidents that occur on board, whether they occur among the passengers or the crew, and I met Mr. Hutchins one morning, I cannot say definitely what day it was, but it was probably the second day after our arrival, I met him at Hall's hardware store, and he [370] said, "We will walk up to the Commercial Club where it is cool," and we walked up there and I got the data necessary for my report, and then I made arrangements with him whereby I could meet him at Doctor Wood's subsequently in order to see the plate, and I went there one day and he had already arrived at Doctor Wood's, and the doctor had his shirt off and was giving him some attention, and I saw the plate and also saw a portion of Mr. Hutchins' chest and arm that was exposed and was not covered by his bandages. He was quite ecchymotic, that is, an effusion about his chest and shoulder—

Q. Doctor, drawing your attention back again to the time of the accident, what indications were there, if any, on the outside of his body visible to the eye as to what happened? Describe his condition as you saw it.

A. There was no deformity displayed.

Mr. DAVIS.—No what?

A. Deformity, no objective symptom in that direction. I think there was a slight abrasion on the

(Testimony of Dr. Robert J. McAdory.)

elbow. His symptoms at the time were almost entirely subjective.

Mr. WARREN.—Just what do you mean by that?

A. Objective symptoms are those we plainly see. Subjective symptoms are those we have to take the patient's word for it, such as pain; that is a subjective symptom.

Q. And when you saw his shoulder in Doctor Wood's office as you have stated, how did the physical appearance compare with the time you saw it before?

A. Well, he was very much bruised over the chest on that side and over the arm. That was the only difference. [371] There was some swelling, a slight swelling.

Q. In the matter of manipulation of the injured part is there any difference in the degree of pain or degree of—well, just say pain—to a patient which varies according to the size of physical condition of the patient?

A. Well, the question of pain as manifested in a patient depends upon several conditions, the temperament of the patient, the amount of injury he sustains, the health of the patient at the time, those conditions we have to take into consideration, also the amount of surgical shock which might have been the result of the injury in the first place. Surgical shock does not continue any great length of time, but it lasts sometime .

Q. I don't think you understood my question. I will put it another way. Is there any difference in

(Testimony of Dr. Robert J. McAdory.)

the amount of manipulation which must be made in the case of a heavily built person to a slightly built person in order for the doctor to determine what is the matter?

A. It is more difficult to make a diagnosis, a definite diagnosis in the case of a fracture in a fat person than in a person that is not fat.

Q. Why?

A. Because of the soft parts that overlie. If in the case of a person with a good deal of adipose tissue overlying the injury it requires deeper pressure and more severe manipulation to ascertain positively what the condition is.

Q. In which of these classes would you place Mr. Hutchins?

A. Well, Mr. Hutchins is a little inclined to be obese.

Q. Can manipulation be made with ordinary satisfaction without [372] an anesthetic in the case, we will say, of a fractured shoulder?

A. Yes, if the surgeon is cruel enough and the element of human sympathy does not come in.

Q. Then you would say, it depends upon the surgeon, not the patient?

A. It is always best in obscure fractures or dislocations to anesthetize the patient—

Mr. DAVIS.—That is not in answer to the question.

The COURT.—The answer is germain to the question; it relates to the question.

Mr. DAVIS.—I move that it be stricken out on the

(Testimony of Dr. Robert J. McAdory.)

ground that it is not responsive to the question.

The COURT.—Overrule the objection.

Mr. DAVIS.—To which ruling I respectfully except and assign the same as error.

The COURT.—Exception allowed.

Mr. WARREN.—Continue, Doctor; you were speaking of anesthetics.

A. I was stating to the effect that it makes it much easier to manipulate a broken bone when the patient is under an anesthetic; the muscle fibre is more or less in a state of contraction, and there is the jagged ends of the bone irritating it and it becomes more tense and contracts, and by the anesthetic we relieve that tenacity and then the muscles relax and we can make our manipulations more easily. We haven't the elements of the patient's cries to disturb us, and when the fracture is ascertained then the subsequent contractions do not need to be so strong to pull the bones together.

Q. As a matter of practice, what is the best known method for [373] a physician to determine whether there is a fracture and what it is?

A. Well, we have the ordinary symptoms of fracture. In the usual diagnosis of a fracture we try to get at the cause, that is, what was the force that brought about the injury in the first place. It gives us some idea of what might be expected, and if it happens to be in the arms or legs or those members which have mates in the body, we then compare the injured with the uninjured one to detect more clearly the deformity.

(Testimony of Dr. Robert J. McAdory.)

Q. Drawing your attention more particularly to this case, where you cannot satisfactorily diagnose the case by manipulation or physical inspection, what is the manipulation?

A. Of course by that term "manipulation," is rather a general one. You may take two ends of a bone in your hand, that is, the member, whatever it is, on the leg, and you may detect what we call a grating or crepitus of these bones. On the other hand, we need not do that. We can sometimes get very reliable symptoms by an upward pressure, by taking, if it is an arm, and press up on that arm. If we elicit pain by that pressure it gives us a very good clue to the situation and it is one symptom that is gone about, that is taken advantage of by most physicians who have to contend with fractures, and it is the one which I used in my examination of Mr. Hutchins. It has the advantage that you don't really twist about the bone very much; you pull up.

Q. Have you an X-ray outfit on the vessel? **[374]**

A. No.

Q. Did you consider in this case the advisability of giving an anesthetic to make the examination?

A. In this case I did not, because of the proximity of the X-ray to the patient, to get more definite results. You cannot in fractures of that character have an absolute definite and true opinion of the condition. That is generally conceded by the leading surgeons of the country, Professor Stinson, for example.

(Testimony of Dr. Robert J. McAdory.)

Q. Is it usual to administer an anesthetic to a patient at sea? A. Oh, yes.

Q. What is that? A. Yes, indeed.

Q. Could that be practically done by the same physician who is making the examination?

A. It would be a very dangerous procedure, and a man would likely lose his license if he tried it.

Mr. DAVIS.—I move that it be stricken out as not responsive to the question.

The COURT.—I didn't catch what the answer was. What was your answer? A. The last, Judge?

Mr. DAVIS.—Yes, what did you answer?

A. Well, to the effect that he would probably lose his license. That is what he wants.

Mr. DAVIS.—Yes, that is what I want, too. He added that himself.

The COURT.—Your first answer was that it would be a very dangerous proceeding?

A. A very dangerous proceeding; that was practically the end, **[375]** and I afterwards made the statement that he would probably lose his license.

Q. If he would administer an anesthetic on the ship?

A. I should have continued by saying that very unfavorable results would follow,—death, for example.

The COURT.—I don't see any objection to the testimony. Overrule the objection.

Mr. DAVIS.—Exception, your Honor.

The COURT.—Exception is allowed.

A. I might add further that of course there are

(Testimony of Dr. Robert J. McAdory.)

conditions, it may be absolutely necessary that we employ a layman to administer the anesthetic; there may be no means of getting around it.

Mr. WARREN.—That would be a matter of extremity?

A. That would be a matter of extremity.

Q. Now, Doctor, do you know that shower-room in which Mr. Hutchins fell? A. Yes.

Q. Have you made any examination of that?

A. Yes.

Q. Did you see it after the accident on that day?

A. Yes.

Q. Will you please state to the Court what facilities, if any, there were in that room for a passenger to hold himself in that shower-room to prevent himself from slipping or falling?

A. The sides of the shower, the marble sides, are about on inch thick, and inside of the bath proper, the little compartment, there is a grab handle, at the rear side of the wall. **[376]**

Q. Do you know whether that grab-handle was there on that day? A. Oh, yes, it was.

Cross-examination of Dr. ROBERT J. McADORY.

Mr. DAVIS.—You had plenty of cotton there and other materials for binding up Mr. Hutchins on that date. The accident happened on February 18, 1916.

A. I had.

Q. Yes, and you had also a hospital-room on board the ship? A. Yes.

Q. Yes, and you had surgical instruments of all

(Testimony of Dr. Robert J. McAdory.)

kinds there, splints and everything necessary in case of accident?

A. Yes, not all kinds, though, there were ordinary —a liberal amount, not all kinds.

Q. You had a liberal supply?

A. I didn't have all kinds, though.

Q. You had a liberal supply, eh? A. Yes.

Q. After you had a look at Mr. Hutchins' arm in the stateroom you told him he had sustained a bruise, did you not?

A. I told Mr. Hutchins at the time there was—

Q. Just answer my question, please, Doctor. It is an unpleasant duty to cross-examine you, but I have to perform that duty. Now, I asked you if you told him,—say yes or no,—did you tell Mr. Hutchins that he had sustained a bruise; either yes or no.

A. I don't think I used the term bruise.

Q. Will you swear you did not?

A. I think I used the term "contusion." **[377]**

Q. Will you swear you didn't use the word "bruise," positively?

A. No, I won't swear whether I used the word "bruise" or "contusion."

Q. Now, if you had immobilized that arm at the time after the accident happened when you visited Mr. Hutchins after you came back from your original call that you made, wouldn't the treatment have been all right, even if it had been a bruise, it wouldn't have done any harm? A. No.